MONTANA

CODE

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1991

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CHAPTER 1

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27-1-101. Judicial remedies defined. Judicial remedies are such as are administered by the courts of justice or by judicial officers empowered for the purpose by the constitution and statutes of this state.

History: En. Sec. 3469, C. Civ. Proc. 1895; re-en. Sec. 8077, Rev. C. 1907; re-en. Sec. 8995, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 20; re-en. Sec. 8995, R.C.M. 1935; R.C.M. 1947, 93-2201.

Cross-References

Remedy for every wrong, 1-3-214.

27-1-102. Actions and special proceedings defined. (1) These remedies are divided into two classes:

(a) actions; and

(b) special proceedings.

(2) An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Every other remedy is a special proceeding.

History: (1)En. Sec. 3470, C. Civ. Proc. 1895; re-en. Sec. 8078, Rev. C. 1907; re-en. Sec. 8996, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 21; re-en. Sec. 8996, R.C.M. 1935; Sec. 93-2202, R.C.M. 1947; (2)Ap. p. Sec. 3471, C. Civ. Proc. 1895; re-en. Sec. 8079, Rev. C. 1907; re-en. Sec. 8997, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 22; re-en. Sec. 8997, R.C.M. 1935; Sec. 93-2203, R.C.M. 1947; Ap. p. Sec. 3472, C. Civ. Proc. 1895; re-en. Sec. 8080, Rev. C. 1907; re-en. Sec. 8998, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 23; re-en. Sec. 8998, R.C.M. 1935; Sec. 92-2204, R.C.M. 1947; R.C.M. 1947, 92-2202, 93-2203, 93-2204.

Cross-References

Claim for relief, Rule 8(a), M.R.Civ.P. (see Title 25, ch. 20).

27-1-103. Civil and criminal actions. (1) Actions are of two kinds:

(a) civil; and

(b) criminal.

(2) A civil action is prosecuted by one party against another for the enforcement or protection of a right or the redress or prevention of a wrong. Titles 45 and 46 define and provide for the prosecution of a criminal action. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

History: (1)En. Sec. 3473, C. Civ. Proc. 1895; re-en. Sec. 8081, Rev. C. 1907; re-en. Sec. 8999, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 24; re-en. Sec. 8999, R.C.M. 1935; Sec. 92-2205, R.C.M. 1947; (2)Ap. p. Sec. 3479, C. Civ. Proc. 1895; re-en. Sec. 8087, Rev. C. 1907; re-en. Sec. 9005, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 30; re-en. Sec. 9005, R.C.M. 1935; Sec. 93-2211, R.C.M. 1947; Ap. p. Sec. 3480, C. Civ. Proc. 1895; re-en. Sec. 8088, Rev. C. 1907; re-en. Sec. 9006, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 31; re-en. Sec. 9006, R.C.M. 1935; Sec. 93-2212, R.C.M. 1947, 93-2212; Ap. p. Sec. 3481, C. Civ. Proc. 1895; re-en. Sec. 8089, Rev. C. 1907; re-en. Sec. 9007, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 32; re-en. Sec. 9007, R.C.M. 1935; Sec. 93-2213, R.C.M. 1947; R.C.M. 1947, 93-2205, 93-2211, 93-2212, 93-2213.

Cross-References

One form of civil action, 25-1-101.

Entry of judgment, Rule 58, M.R.Civ.P. (See Title 25).

Effect of code upon criminal acts, 45-1-104.

27-1-104. Bases for civil actions. A civil action arises out of:

(1) an obligation;

(2) an injury.

History: En. Sec. 3474, C. Civ. Proc. 1895; re-en. Sec. 8082, Rev. C. 1907; re-en. Sec. 9000, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 25; re-en. Sec. 9000, R.C.M. 1935; R.C.M. 1947, 93-2206.

Cross-References

One form of civil action, 25-1-101.

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Appeal to Supreme Court, Title 25, ch. 12.

Execution of judgment, Title 25, ch. 13.

Execution, Rule 69, M.R.Civ.P. (See Title 25, ch. 20).

How appeal taken, Rule 4, M.R.App.P. (See Title 25, ch. 21).

Obligations in general, Title 28, ch. 1.

27-1-105. Obligation defined. An obligation is a legal duty by which one person is bound to do or not to do a certain thing and arises from:

(1) contract; or

(2) operation of law.

History: En. Sec. 3475, C. Civ. Proc. 1895; re-en. Sec. 8083, Rev. C. 1907; re-en. Sec. 9001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 26; re-en. Sec. 9001, R.C.M. 1935; R.C.M. 1947, 93-2207.

Cross-References

How obligation arises, 28-1-102.

27-1-106. Injury defined. (1) An injury is of two kinds:

(a) to the person; and

(b) to property.

(2) An injury to property consists in depriving its owner of the benefit of it, which is done by taking, withholding, deteriorating, or destroying it. Every other injury is an injury to the person.

History: (1)En. Sec. 3476, C. Civ. Proc. 1895; re-en. Sec. 8084, Rev. C. 1907; re-en. Sec. 9002, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 27; re-en. Sec. 9002, R.C.M. 1935; Sec. 93-2208, R.C.M. 1947; (2)Ap. p. Sec. 3477, C. Civ. Proc. 1895; re-en. Sec. 8085, Rev. C. 1907; re-en. Sec. 9003, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 28; re-en. Sec. 9003, R.C.M. 1935; Sec. 93-2209, R.C.M. 1947; Ap. p. Sec. 3478, C. Civ. Proc. 1895; re-en. Sec. 8086, Rev. C. 1907; re-en. Sec. 9004, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 29; re-en. Sec. 9004, R.C.M. 1935; Sec. 93-2210, R.C.M. 1947; R.C.M. 1947, 93-2208, 93-2209, 93-2210.

27-1-107. Kinds of relief — when given. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance. Specific and preventive relief may be given only in those cases specified by statute.

History: En. Sec. 4260, Civ. C. 1895; re-en. Sec. 6038, Rev. C. 1907; re-en. Sec. 8657, R.C.M. 1921; Cal. Civ. C. Sec. 3274; re-en. Sec. 8657, R.C.M. 1935; R.C.M. 1947, 17-101; amd. Sec. 1, Ch. 12, L. 1979.

Cross-References

Specific and preventive relief, Title 27, ch. 1, part 4.

Part 2

Damages

Part Cross-References

Periodic payment of certain future damages, Title 25, ch. 9, part 4.

Limitation on liability for failure to comply with income withholding order, 40-5-424.

27-1-201. Detriment defined. Detriment is a loss or harm suffered in person or property.

History: En. Sec. 4271, Civ. C. 1895; re-en. Sec. 6041, Rev. C. 1907; re-en. Sec. 8660, R.C.M. 1921; Cal. Civ. C. Sec. 3282; Field Civ. C. Sec. 1833; re-en. Sec. 8660, R.C.M. 1935; R.C.M. 1947, 17-202.

27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages.

History: En. Sec. 4270, Civ. C. 1895; re-en. Sec. 6040, Rev. C. 1907; re-en. Sec. 8659, R.C.M. 1921; Cal. Civ. C. Sec. 3281; Field Civ. C. Sec. 1832; re-en. Sec. 8659, R.C.M. 1935; R.C.M. 1947, 17-201.

Cross-References

The administration of justice, Art. II, sec. 16, Mont. Const.

Liability exposure, Title 2, ch. 9, part 1.

27-1-203. Right to damages for detriment resulting after suit brought and for future detriment. Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof or certain to result in the future.

History: En. Sec. 4272, Civ. C. 1895; re-en. Sec. 6042, Rev. C. 1907; re-en. Sec. 8661, R.C.M. 1921; Cal. Civ. C. Sec. 3283; Field Civ. C. Sec. 1834; re-en. Sec. 8661, R.C.M. 1935; R.C.M. 1947, 17-203.

27-1-204. Nominal damages when no appreciable detriment. When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

History: En. Sec. 4367, Civ. C. 1895; re-en. Sec. 6088, Rev. C. 1907; re-en. Sec. 8706, R.C.M. 1921; Cal. Civ. C. Sec. 3360; Field Civ. C. Sec. 1879; re-en. Sec. 8706, R.C.M. 1935; R.C.M. 1947, 17-608.

27-1-205 through 27-1-209 reserved.

27-1-210. Interest on torts. (1) Subject to subsection (2), in an action for recovery on an injury as defined in 27-1-106, a prevailing claimant is entitled to interest at a rate of 10% on any claim for damages awarded that are capable of being made certain by calculation, beginning from the date 30 days after the claimant presented a written statement to the opposing party or his agent stating the claim and how the specific sum was calculated.

(2) The interest provisions of subsection (1) do not apply to damages not capable of being made certain by calculation, including but not limited to future damages until such damages are incurred and damages for:

(a) pain and suffering;
(b) injury to credit, reputation, or financial standing;
(c) mental anguish or suffering;
(d) exemplary or punitive damages;
(e) loss of established way of life;
(f) loss of consortium; and
(g) attorney fees.

(3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on any judgment rendered.

(4) Any payment by a party of any claim or interest thereon as set forth in subsection (1) shall not be an admission of liability and shall not be made known to the jury.

History: En. Sec. 1, Ch. 523, L. 1985.

Cross-References

Interest on judgments, 25-9-204; 25-9-205; Rule 31, M.R.App.P. (see Title 25, ch. 21).

Execution to include interest, 25-13-304.

27-1-211. Right to interest. Every person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover which is vested in him upon a particular day is entitled also to recover interest thereon from that day except during such time as the debtor is prevented by law or by the act of the creditor from paying the debt.

History: En. Sec. 4280, Civ. C. 1895; re-en. Sec. 6043, Rev. C. 1907; re-en. Sec. 8662, R.C.M. 1921; Cal. Civ. C. Sec. 3287; Field Civ. C. Sec. 1835; re-en. Sec. 8662, R.C.M. 1935; R.C.M. 1947, 17-204.

27-1-212. When award of interest discretionary. In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. This section does not apply in actions for recovery of damages arising from injury to a person or property brought against a governmental entity under Title 2, chapter 9, parts 1 through 3, as amended.

History: En. Sec. 4281, Civ. C. 1895; re-en. Sec. 6044, Rev. C. 1907; re-en. Sec. 8663, R.C.M. 1921; Cal. Civ. C. Sec. 3288; Field Civ. C. Sec. 1836; re-en. Sec. 8663, R.C.M. 1935; amd. Sec. 3, Ch. 234, L. 1977; R.C.M. 1947, 17-205.

27-1-213. Validity of interest rate set by contract. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

History: En. Sec. 4282, Civ. C. 1895; re-en. Sec. 6045, Rev. C. 1907; re-en. Sec. 8664, R.C.M. 1921; Cal. Civ. C. Sec. 3289; Field Civ. C. Sec. 1837; re-en. Sec. 8664, R.C.M. 1935; R.C.M. 1947, 17-206.

Cross-References

Interest rates allowed by agreement, 31-1-107.

27-1-214. Waiver of interest by accepting principal. Accepting payment of the whole principal, as such, waives all claim to interest.

History: En. Sec. 4283, Civ. C. 1895; re-en. Sec. 6046, Rev. C. 1907; re-en. Sec. 8665, R.C.M. 1921; Cal. Civ. C. Sec. 3290; Field Civ. C. Sec. 1838; re-en. Sec. 8665, R.C.M. 1935; R.C.M. 1947, 17-207.

27-1-215 through 27-1-219 reserved.

27-1-220. Punitive damages — when allowed. (1) Except as otherwise expressly provided by statute, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(i) contract; or

(ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201.

History: En. Sec. 1, Ch. 507, L. 1985; amd. Sec. 1, Ch. 627, L. 1987.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Insurance coverage of punitive damages, 33-15-317.

27-1-221. Punitive damages — liability — proof — award. (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if he has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if he:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, he shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) Nothing in this section is intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth.

History: En. Sec. 4290, Civ. C. 1895; re-en. Sec. 6047, Rev. C. 1907; re-en. Sec. 8666, R.C.M. 1921; Cal. Civ. C. Sec. 3294; Field. Civ. C. Sec. 1839; re-en. Sec. 8666, R.C.M. 1935; R.C.M. 1947, 17-208; amd. Sec. 2, Ch. 507, L. 1985; amd. Sec. 2, Ch. 627, L. 1987; amd. Sec. 33, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted reference to "this section" for reference to "subsection (2)"; and made minor changes in style.

Cross-References

State or other governmental entity immune from exemplary and punitive damages, 2-9-105.

Insurance coverage of punitive damages, 33-15-317.

27-1-222. Exemplary damages for inhumane injuries to animals. For wrongful injuries to animals, being subjects of property, committed willfully or by gross negligence in disregard of humanity, exemplary damages may be given.

History: En. Sec. 4337, Civ. C. 1895; re-en. Sec. 6075, Rev. C. 1907; re-en. Sec. 8693, R.C.M. 1921; Cal. Civ. C. Sec. 3340; Field Civ. C. Sec. 1867; re-en. Sec. 8693, R.C.M. 1935; R.C.M. 1947; 17-408.

27-1-223. Damages for injuries or death inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, he must provide for the maintenance of the spouse and minor children of the person slain or permanently disabled in such manner and at such cost, either by aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, as is determined by the court and he is liable for and must pay all debts of the person slain or permanently disabled.

History: Ap. p. Sec. 4353, Civ. C. 1895; re-en. Sec. 6079, Rev. C. 1907; re-en. Sec. 8697, R.C.M. 1921; Cal. Civ. C. Sec. 3347; re-en. Sec. 8697, R.C.M. 1935; amd. Sec. 11, Ch. 535, L. 1975; Sec. 17-504, R.C.M. 1947; Ap. p. Sec. 4354, Civ. C. 1895; re-en. Sec. 6080, Rev. C. 1907; re-en. Sec. 8698, R.C.M. 1921; Cal. Civ. C. Sec. 3348; re-en. Sec. 8698, R.C.M. 1935; Sec. 17-505, R.C.M. 1947; R.C.M. 1947, 17-504, 17-505; amd. Sec. 2, Ch. 12, L. 1979.

Part 3

Measure of Damages

Part Cross-References

Interest on torts, 27-1-210.

27-1-301. Prescribed damages exclusive of exemplary damages and interest. The damages prescribed by 27-1-204, 27-1-222, 27-1-223, and this part are exclusive of exemplary damages and interest except where those are expressly mentioned.

History: En. Sec. 4364, Civ. C. 1895; re-en. Sec. 6085, Rev. C. 1907; re-en. Sec. 8703, R.C.M. 1921; Cal. Civ. C. Sec. 3357; Field Civ. C. Sec. 1876; re-en. Sec. 8703, R.C.M. 1935; R.C.M. 1947, 17-605.

27-1-302. Damages to be reasonable. Damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

History: En. Sec. 4366, Civ. C. 1895; re-en. Sec. 6087, Rev. C. 1907; re-en. Sec. 8705, R.C.M. 1921; Cal. Civ. C. Sec. 3359; Field. Civ. C. Sec. 1878; re-en. Sec. 8705, R.C.M. 1935; R.C.M. 1947, 17-607.

Cross-References

Remedy for every wrong, 1-3-214.

Relief from forfeiture, 28-1-104.

When provision fixing liquidated damages valid, 28-2-721.

27-1-303. Limitation of damages for breach of obligation. No person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides unless a greater recovery is specified by statute.

History: En. Sec. 4365, Civ. C. 1895; re-en. Sec. 6086, Rev. C. 1907; re-en. Sec. 8704, R.C.M. 1921; Cal. Civ. C. Sec. 3358; Field. Civ. C. Sec. 1877; re-en. Sec. 8704, R.C.M. 1935; R.C.M. 1947, 17-606; amd. Sec. 3, Ch. 12, L. 1979.

27-1-304. Value of written instrument. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

History: En. Sec. 4363, Civ. C. 1895; re-en. Sec. 6084, Rev. C. 1907; re-en. Sec. 8702, R.C.M. 1921; Cal. Civ. C. Sec. 3356; Based on Field. Civ. C. Sec. 1875; re-en. Sec. 8702, R.C.M. 1935; R.C.M. 1947, 17-604.

27-1-305. Property of peculiar value. Where a certain property has a peculiar value to a person recovering damages for deprivation thereof or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof or against a willful wrongdoer.

History: En. Sec. 4362, Civ. C. 1895; re-en. Sec. 6083, Rev. C. 1907; re-en. Sec. 8701, R.C.M. 1921; Cal. Civ. C. Sec. 3355; Field Civ. C. Sec. 1874; re-en. Sec. 8701, R.C.M. 1935; R.C.M. 1947, 17-603.

27-1-306. When replacement value to be allowed. The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value shall be the actual replacement value of the motor vehicle rather than its "book value". Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage.

History: En. Sec. 1, Ch. 320, L. 1981.

27-1-307. Definitions. As used in 27-1-307 and 27-1-308:

(1) "Collateral source" means a payment for something that is later included in a tort award and which is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of his immediate family if he is obligated to repay a member of his immediate family.

(2) "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

(3) (a) "Plaintiff" means a person who alleges that he sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery.

(b) The term includes:

(i) a legal representative;

(ii) a person with a wrongful death or surviving cause of action;

(iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services; and

(iv) any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death.

History: En. Sec. 1, Ch. 628, L. 1987.

27-1-308. Collateral source reductions in actions arising from bodily injury or death — subrogation rights. (1) In an action arising from bodily injury or death when the total award against all defendants is in excess of $50,000 and the plaintiff will be fully compensated for his damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right.

(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:

(a) the amount the plaintiff paid for the 5 years prior to the date of injury;

(b) the amount the plaintiff paid from date of injury to date of judgment; and

(c) the present value of the amount the plaintiff is thereafter obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from such a collateral source will be payable, he shall:

(a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest; and

(b) reduce the award by the amount deposited. The amount deposited and any interest thereon are subject to the further order of the court, pursuant to the requirements of this section.

(4) Except for subrogation rights specifically granted by state or federal law, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if an award is reduced by that amount under subsection (1).

History: **En. Sec. 2, Ch. 628, L. 1987.**

27-1-309 reserved.

27-1-310. Damages for emotional or mental distress prohibited in contract actions — exception. In an action for breach of an obligation or duty arising from contract, recovery is prohibited for emotional or mental distress, except in those actions involving actual physical injury to the plaintiff. Emotional or mental distress, as used in this section, includes mental anguish or suffering, sorrow, grief, fright, shame, embarrassment, humiliation, anger, chagrin, disappointment, or worry.

History: **En. Sec. 1, Ch. 488, L. 1987.**

27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages, except when otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom. Damages which are not clearly ascertainable in both their nature and origin cannot be recovered for a breach of contract.

History: **Ap. p. Sec. 4300, Civ. C. 1895; re-en. Sec. 6048, Rev. C. 1907; re-en. Sec. 8667, R.C.M. 1921; Cal. Civ. C. Sec. 3300; Based on Field Civ. C. Sec. 1840; re-en. Sec. 8667, R.C.M. 1935; Sec. 17-301, R.C.M. 1947; Ap. p. Sec. 4301, Civ. C. 1895; re-en. Sec. 6049, Rev. C. 1907; re-en. Sec. 8668, R.C.M. 1921; Cal. Civ. C. Sec. 3301; Field Civ. C. Sec. 1841; re-en. Sec. 8668, R.C.M. 1935; Sec. 17-302, R.C.M. 1947; R.C.M. 1947, 17-301, 17-302; amd. Sec. 4, Ch. 12, L. 1979.**

Cross-References

Remedies for contracts not written in plain language, 30-14-1111, 30-14-1112.

27-1-312. Breach of obligation to pay money. The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

History: **En. Sec. 4302, Civ. C. 1895; re-en. Sec. 6050, Rev. C. 1907; re-en. Sec. 8669, R.C.M. 1921; Cal. Civ. C. Sec. 3302; Field Civ. C. Sec. 1842; re-en. Sec. 8669, R.C.M. 1935; R.C.M. 1947, 17-303.**

Cross-References

Treble damages for issuing bad check, 27-1-717.

27-1-313. Breach of warranty of agent's authority. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with and the reasonable expenses of legal proceedings taken in good faith to enforce the act of the agent against his principal.

History: En. Sec. 4318, Civ. C. 1895; re-en. Sec. 6066, Rev. C. 1907; re-en. Sec. 8684, R.C.M. 1921; Cal. Civ. C. Sec. 3318; Field Civ. C. Sec. 1858; re-en. Sec. 8684, R.C.M. 1935; R.C.M. 1947, 17-318.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

27-1-314. Breach of agreement to convey real property. The detriment caused by the breach of an agreement to convey an estate in real property is considered to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon. If the breach was in bad faith and the agreed price was less than the value of the estate, the detriment is also considered to include the difference between the agreed price and the value of the estate at the time of the breach and the expenses properly incurred in preparing to enter upon the land.

History: En. Sec. 4306, Civ. C. 1895; re-en. Sec. 6054, Rev. C. 1907; re-en. Sec. 8672, R.C.M. 1921; Cal. Civ. C. Sec. 3306; Field Civ. C. Sec. 1846; re-en. Sec. 8672, R.C.M. 1935; R.C.M. 1947, 17-306; amd. Sec. 5, Ch. 12, L. 1979.

27-1-315. Breach of agreement to buy real property. The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract over the value of the property to him.

History: En. Sec. 4307, Civ. C. 1895; re-en. Sec. 6055, Rev. C. 1907; re-en. Sec. 8673, R.C.M. 1921; Cal. Civ. C. Sec. 3307; Field Civ. C. Sec. 1847; re-en. Sec. 8673, R.C.M. 1935; R.C.M. 1947, 17-307.

27-1-316. Breach of covenants in grants of estates in real property. (1) The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty, or of quiet enjoyment in a grant of an estate in real property is deemed to be:

(a) the price paid to the grantor or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property;

(b) interest thereon for the time during which the grantee derived no benefit from the property, not exceeding 5 years;

(c) any expenses properly incurred by the covenantee in defending his possession.

(2) The detriment caused by the breach of a covenant against encumbrances in a grant of an estate in real property is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach as compared with the whole or, in the latter case, interest on a like amount.

History: (1)En. Sec. 4304, Civ. C. 1895; re-en. Sec. 6052, Rev. C. 1907; re-en. Sec. 8670, R.C.M. 1921; Cal. Civ. C. Sec. 3304; Based on Field Civ. C. Sec. 1844; re-en. Sec. 8670, R.C.M. 1935; Sec. 17-304, R.C.M. 1947; (2)En. Sec. 4305, Civ. C. 1895; re-en. Sec. 6053, Rev.

C. 1907; re-en. Sec. 8671, R.C.M. 1921; Cal. Civ. C. Sec. 3305; Field Civ. C. Sec. 1845; re-en. Sec. 8671, R.C.M. 1935; Sec. 17-305, R.C.M. 1947; R.C.M. 1947, 17-304, 17-305.

27-1-317. Breach of obligation other than contract. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

History: En. Sec. 4330, Civ. C. 1895; re-en. Sec. 6068, Rev. C. 1907; re-en. Sec. 8686, R.C.M. 1921; Cal. Civ. C. Sec. 3333; Field. Civ. C. Sec. 1860; re-en. Sec. 8686, R.C.M. 1935; R.C.M. 1947, 17-401.

27-1-318. Wrongful occupation of real property. The detriment caused by the wrongful occupation of real property in cases not otherwise provided for in this code is deemed to be the value of the use of the property for the time of such occupation, not exceeding 5 years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

History: En. Sec. 4331, Civ. C. 1895; re-en. Sec. 6069, Rev. C. 1907; re-en. Sec. 8687, R.C.M. 1921; Cal. Civ. C. Sec. 3334; Based on Field Civ. C. Sec. 1861; re-en. Sec. 8687, R.C.M. 1935; R.C.M. 1947, 17-402.

27-1-319. Willful holding over of real property. For willfully holding over real property by a person who entered upon the same as guardian or trustee for a minor or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

History: En. Sec. 4332, Civ. C. 1895; re-en. Sec. 6070, Rev. C. 1907; re-en. Sec. 8688, R.C.M. 1921; Cal. Civ. C. Sec. 3335; Field. Civ. C. Sec. 1862; re-en. Sec. 8688, R.C.M. 1935; R.C.M. 1947, 17-403; amd. Sec. 3, Ch. 2, L. 1983.

27-1-320. Conversion of personal property. (1) The detriment caused by the wrongful conversion of personal property is presumed to be:

(a) the value of the property at the time of its conversion with the interest from that time or, when the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party; and

(b) a fair compensation for the time and money properly expended in pursuit of the property.

(2) The presumption declared by subsection (1) cannot be repelled in favor of one whose possession was wrongful from the beginning by his subsequent application of the property to the benefit of the owner without such owner's consent.

History: (1)En. Sec. 4333, Civ. C. 1895; re-en. Sec. 6071, Rev. C. 1907; re-en. Sec. 8689, R.C.M. 1921; Cal. Civ. C. Sec. 3336; Field Civ. C. Sec. 1863; re-en. Sec. 8689, R.C.M. 1935; Sec. 17-404, R.C.M. 1947; (2)En. Sec. 4334, Civ. C. 1895; re-en. Sec. 6072, Rev. C. 1907; re-en. Sec. 8690, R.C.M. 1921; Cal. Civ. C. Sec. 3337; Field. Civ. C. Sec. 1864; re-en. Sec. 8690, R.C.M. 1935; Sec. 17-405, R.C.M. 1947; R.C.M. 1947, 17-404, 17-405; amd. Sec. 6, Ch. 12, L. 1979.

27-1-321. Conversion of personal property — damages of lienholder. One having a mere lien on personal property cannot recover greater damages for its conversion, from one having a right thereto superior to his after his lien is discharged, than the amount secured by the lien and the compensation allowed by 27-1-320(1) for the loss of time and expenses.

History: En. Sec. 4335, Civ. C. 1895; re-en. Sec. 6073, Rev. C. 1907; re-en. Sec. 8691, R.C.M. 1921; Cal. Civ. C. Sec. 3338; Field Civ. C. Sec. 1865; re-en. Sec. 8691, R.C.M. 1935; R.C.M. 1947, 17-406.

27-1-322. Seduction. The damages for seduction rest in the sound discretion of the jury.

History: En. Sec. 4336, Civ. C. 1895; re-en. Sec. 6074, Rev. C. 1907; re-en. Sec. 8692, R.C.M. 1921; Cal. Civ. C. Sec. 3339; Field Civ. C. Sec. 1866; re-en. Sec. 8692, R.C.M. 1935; R.C.M. 1947, 17-407.

Cross-References

Who may sue for whose seduction, 27-1-514.

Time for commencement of action 2 years, 27-2-204.

27-1-323. Wrongful death. In every action under 27-1-513, such damages may be given as under all the circumstances of the case may be just.

History: En. Sec. 1, p. 561, Cod. Stat. 1871; en. Sec. 14, p. 42, L. 1877; re-en. Sec. 14, 1st Div. Rev. Stat. 1879; re-en. Sec. 14, 1st Div. Comp. Stat. 1887; re-en. Sec. 579, C. Civ. Proc. 1895; re-en. Sec. 6486, Rev. C. 1907; re-en. Sec. 9076, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 377; re-en. Sec. 9076, R.C.M. 1935; R.C.M. 1947, 93-2810(part); amd. Sec. 1, Ch. 449, L. 1987.

Part 4

Specific and Preventive Relief

27-1-401. When specific or preventive relief permitted. Specific or preventive relief may be given in the cases specified in this part and Title 28, chapter 2, parts 16 and 17, and in no others. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, or to enforce the penalty or forfeiture in any case.

History: Ap. p. Sec. 4380, Civ. C. 1895; re-en. Sec. 6089, Rev. C. 1907; re-en. Sec. 8707, R.C.M. 1921; Cal. Civ. C. Sec. 3366; Field Civ. C. Sec. 1880; re-en. Sec. 8707, R.C.M. 1935; Sec. 17-701, R.C.M. 1947; Ap. p. Sec. 4383, Civ. C. 1895; re-en. Sec. 6092, Rev. C. 1907; re-en. Sec. 8710, R.C.M. 1921; Cal. Civ. C. Sec. 3369; Field Civ. C. Sec. 1883; re-en. Sec. 8710, R.C.M. 1935; Sec. 17-704, R.C.M. 1947; R.C.M. 1947, 17-701, 17-704.

Cross-References

U.C.C. — buyer's remedies in general, 30-2-711.

U.C.C. — buyer's right to specific performance, 30-2-716.

Injunctive relief against unlawful termination or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

27-1-402. How specific relief given. Specific relief is given by:

(1) taking possession of a thing and delivering it to a claimant;

(2) compelling the party himself to do that which ought to be done; or

(3) declaring and determining the rights of parties otherwise than by an award of damages.

History: En. Sec. 4381, Civ. C. 1895; re-en. Sec. 6090, Rev. C. 1907; re-en. Sec. 8708, R.C.M. 1921; Cal. Civ. C. Sec. 3367; Field Civ. C. Sec. 1881; re-en. Sec. 8708, R.C.M. 1935; R.C.M. 1947, 17-702.

Cross-References
What ought to have been done, 1-3-220.

27-1-403. How preventive relief given. Preventive relief is given by prohibiting a party from doing that which ought not to be done. Preventive relief is granted by injunction, provisional or final.

History: Ap. p. Sec. 4382, Civ. C. 1895; re-en. Sec. 6091, Rev. C. 1907; re-en. Sec. 8709, R.C.M. 1921; Cal. Civ. C. Sec. 3368; Field. Civ. C. Sec. 1882; re-en. Sec. 8709, R.C.M. 1935; Sec. 17-703, R.C.M. 1947; Ap. p. Sec. 4460, Civ. C. 1895; re-en. Sec. 6118, Rev. C. 1907; re-en. Sec. 8736, R.C.M. 1921; Cal. Civ. C. Sec. 3420; Field Civ. C. Sec. 1909; re-en. Sec. 8736, R.C.M. 1935; Sec. 17-1101, R.C.M. 1947; R.C.M. 1947, 17-703, 17-1101.

Cross-References
Injunctions, Title 27, ch. 19.

27-1-404 through 27-1-410 reserved.

27-1-411. When specific performance of an obligation may be compelled. Except as otherwise provided in this part and Title 28, chapter 2, parts 16 and 17, the specific performance of an obligation may be compelled when:

(1) the act to be done is in the performance, wholly or partly, of an express trust;

(2) the act to be done is such that pecuniary compensation for its nonperformance would not afford adequate relief;

(3) it would be extremely difficult to ascertain the actual damage caused by the nonperformance of the act to be done; or

(4) it has been expressly agreed in writing, between the parties to the contract, that specific performance thereof may be required by either party or that damages shall not be considered adequate relief.

History: En. Sec. 4410, Civ. C. 1895; re-en. Sec. 6096, Rev. C. 1907; re-en. Sec. 8714, R.C.M. 1921; Cal. Civ. C. Sec. 3384; Field Civ. C. Sec. 1887; re-en. Sec. 8714, R.C.M. 1935; R.C.M. 1947, 17-801.

Cross-References
U.C.C. — buyer's rights to specific performance or recovery of goods, 30-2-716.

27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:

(1) an obligation to render personal service or to employ another therein;

(2) an agreement to marry or live with another;

(3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;

(4) an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or

(5) an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

History: En. Sec. 4416, Civ. C. 1895; re-en. Sec. 6102, Rev. C. 1907; re-en. Sec. 8720, R.C.M. 1921; Cal. Civ. C. Sec. 3390; Field Civ. C. Sec. 1893; re-en. Sec. 8720, R.C.M. 1935; amd. Sec. 12, Ch. 535, L. 1975; R.C.M. 1947, 17-807; amd. Sec. 23, Ch. 684, L. 1985.

Cross-References

Cause of action for breach of promise to marry abolished, 27-1-602.

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

27-1-413. Specific performance not to be oppressive. Specific performance cannot be compelled when it would operate more harshly upon the party required to perform than its refusal would operate upon the party seeking it.

History: En. Sec. 4419, Civ. C. 1895; re-en. Sec. 6105, Rev. C. 1907; re-en. Sec. 8723, R.C.M. 1921; Field Civ. C. Sec. 1896; re-en. Sec. 8723, R.C.M. 1935; R.C.M. 1947, 17-810.

27-1-414. Right to specific performance to be mutual. (1) When either of the parties to an obligation is entitled to a specific performance thereof according to the provisions of 27-1-411, the other party is also entitled to it, though not within those provisions.

(2) Neither party to any obligation can be compelled specifically to perform it unless the other party thereto has performed or is compellable specifically to perform everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

History: (1)En. Sec. 4411, Civ. C. 1895; re-en. Sec. 6097, Rev. C. 1907; re-en. Sec. 8715, R.C.M. 1921; Cal. Civ. C. Sec. 3385; Field Civ. C. Sec. 1888; re-en. Sec. 8715, R.C.M. 1935; Sec. 17-802, R.C.M. 1947; (2)En. Sec. 4412, Civ. C. 1895; re-en. Sec. 6098, Rev. C. 1907; re-en. Sec. 8716, R.C.M. 1921; Cal. Civ. C. Sec. 3386; Field Civ. C. Sec. 1889; re-en. Sec. 8716, R.C.M. 1935; Sec. 17-803, R.C.M. 1947; R.C.M. 1947, 17-802, 17-803.

27-1-415. Parties who cannot be compelled to perform. Specific performance cannot be enforced against a party to a contract in any of the following cases:

(1) if he has not received an adequate consideration for the contract;

(2) if it is not, as to him, just and reasonable;

(3) if his assent was obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract or by any promise of such party which has not been substantially fulfilled; or

(4) if his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for and the contract specifically enforced in other respects if proper to be so enforced.

History: En. Sec. 4417, Civ. C. 1895; re-en. Sec. 6103, Rev. C. 1907; re-en. Sec. 8721, R.C.M. 1921; Cal. Civ. C. Sec. 3391; Field Civ. C. Sec. 1894; re-en. Sec. 8721, R.C.M. 1935; R.C.M. 1947, 17-808.

27-1-416. Parties who cannot obtain specific performance. Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party except where his failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default.

History: En. Sec. 4418, Civ. C. 1895; re-en. Sec. 6104, Rev. C. 1907; re-en. Sec. 8722, R.C.M. 1921; Cal. Civ. C. Sec. 3392; Field Civ. C. Sec. 1895; re-en. Sec. 8722, R.C.M. 1935; R.C.M. 1947, 17-809.

27-1-417. Specific performance by party who signed when other party did not sign contract. A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed or offers to perform it on his part and the case is otherwise proper for enforcing specific performance.

History: En. Sec. 4414, Civ. C. 1895; re-en. Sec. 6100, Rev. C. 1907; re-en. Sec. 8718, R.C.M. 1921; Cal. Civ. C. Sec. 3388; Field. Civ. C. Sec. 1891; re-en. Sec. 8718, R.C.M. 1935; R.C.M. 1947, 17-805.

27-1-418. Liquidation of damages not a bar to specific performance. A contract otherwise proper to be specifically enforced may be thus enforced though a penalty is imposed or the damages are liquidated for its breach and the party in default is willing to pay the same.

History: En. Sec. 4415, Civ. C. 1895; re-en. Sec. 6101, Rev. C. 1907; re-en. Sec. 8719, R.C.M. 1921; Cal. Civ. C. Sec. 3389; Field Civ. C. Sec. 1892; re-en. Sec. 8719, R.C.M. 1935; R.C.M. 1947, 17-806.

27-1-419. Specific performance of agreement to transfer property — distinction between real and personal property. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation and that the breach of an agreement to transfer personal property can be thus relieved.

History: En. Sec. 4413, Civ. C. 1895; re-en. Sec. 6099, Rev. C. 1907; re-en. Sec. 8717, R.C.M. 1921; Cal. Civ. C. Sec. 3387; Field Civ. C. Sec. 1890; re-en. Sec. 8717, R.C.M. 1935; R.C.M. 1947, 17-804.

27-1-420. No specific performance of agreement to buy property when title not clear. An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

History: En. Sec. 4420, Civ. C. 1895; re-en. Sec. 6106, Rev. C. 1907; re-en. Sec. 8724, R.C.M. 1921; Cal. Civ. C. Sec. 3394; Field Civ. C. Sec. 1897; re-en. Sec. 8724, R.C.M. 1935; R.C.M. 1947, 17-811.

27-1-421. Compelling performance of successor in interest in title — obligations respecting real property. Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation except a purchaser or encumbrancer in good faith and for value, and except that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

History: En. Sec. 4421, Civ. C. 1895; re-en. Sec. 6107, Rev. C. 1907; re-en. Sec. 8725, R.C.M. 1921; Cal. Civ. C. Sec. 3395; Field Civ. C. Sec. 1898; re-en. Sec. 8725, R.C.M. 1935; R.C.M. 1947, 17-812.

27-1-422 through 27-1-430 reserved.

27-1-431. Judgment for possession of or title to real property. A person entitled to specific real property, by reason either of a perfected title or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by this code, either by a judgment for its possession to be executed by the sheriff or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

History: En. Sec. 4390, Civ. C. 1895; re-en. Sec. 6093, Rev. C. 1907; re-en. Sec. 8711, R.C.M. 1921; Cal. Civ. C. Sec. 3375; Field. Civ. C. Sec. 1884; re-en. Sec. 8711, R.C.M. 1935; R.C.M. 1947, 17-705.

Cross-References

Execution of judgment, Title 25, ch. 13.

27-1-432. Judgment for delivery of personal property. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by this code. Any person having the possession or control of a particular article of personal property of which he is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession.

History: Ap. p. Sec. 4400, Civ. C. 1895; re-en. Sec. 6094, Rev. C. 1907; re-en. Sec. 8712, R.C.M. 1921; Cal. Civ. C. Sec. 3379; Field Civ. C. Sec. 1885; re-en. Sec. 8712, R.C.M. 1935; Sec. 17-706, R.C.M. 1947; Ap. p. Sec. 4401, Civ. C. 1895; re-en. Sec. 6095, Rev. C. 1907; re-en. Sec. 8713, R.C.M. 1921; Cal. Civ. C. Sec. 3380; Based on Field Civ. C. Sec. 1886; re-en. Sec. 8713, R.C.M. 1935; Sec. 17-707, R.C.M. 1947; R.C.M. 1947, 17-706, 17-707.

Cross-References

Execution of judgment, Title 25, ch. 13.

27-1-433. Cancellation of written instrument. (1) A written instrument in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable may, upon his application, be so adjudged and ordered to be delivered up or canceled.

(2) An instrument the invalidity of which is apparent upon its face or upon the face of another instrument which is necessary to the use of the former in evidence is not to be deemed capable of causing injury within the provisions of subsection (1).

(3) Where an instrument is evidence of different rights or obligations, it may be canceled in part and allowed to stand for the residue.

History: (1)En. Sec. 4450, Civ. C. 1895; re-en. Sec. 6115, Rev. C. 1907; re-en. Sec. 8733, R.C.M. 1921; Cal. Civ. C. Sec. 3412; Field Civ. C. Sec. 1906; re-en. Sec. 8733, R.C.M. 1935; Sec. 17-1001, R.C.M. 1947; (2)En. Sec. 4451, Civ. C. 1895; re-en. Sec. 6116, Rev. C. 1907; re-en. Sec. 8734, R.C.M. 1921; Cal. Civ. C. Sec. 3413; Field Civ. C. Sec. 1907; re-en. Sec. 8734, R.C.M. 1935; Sec. 17-1002, R.C.M. 1947; (3)En. Sec. 4452, Civ. C. 1895; re-en. Sec. 6117, Rev. C. 1907; re-en. Sec. 8735, R.C.M. 1921; Cal. Civ. C. Sec. 3414; Field Civ. C. Sec. 1908; re-en. Sec. 8735, R.C.M. 1935; Sec. 17-1003, R.C.M. 1947; R.C.M. 1947, 17-1001, 17-1002, 17-1003.

Part 5

Right to Bring Action or Assert Defense

27-1-501. Survival of cause of action or defense — death or disability or transfer of interest. (1) An action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, it survives and may be maintained by his representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of his representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

(2) Actions brought under this section and 27-1-513 must be combined in one legal action, and any element of damages may be recovered only once.

History: En. Sec. 16, p. 45, Bannack Stat.; re-en. Sec. 16, p. 137, L. 1867; re-en. Sec. 16, p. 29, Cod. Stat. 1871; amd. Sec. 22, p. 43, L. 1877; re-en. Sec. 22, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 98, L. 1883; re-en. Sec. 22, 1st Div. Comp. Stat. 1887; amd. Sec. 587, C. Civ. Proc. 1895; re-en. Sec. 6494, Rev. C. 1907; re-en. Sec. 9086, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 385; re-en. Sec. 9086, R.C.M. 1935; repealed Sec. 84, Ch. 13, L. 1961; reinstated Sec. 2, Ch. 14, L. 1963; R.C.M. 1947, 93-2824; amd. Sec. 7, Ch. 12, L. 1979; amd. Sec. 2, Ch. 449, L. 1987.

Cross-References

Substitution of parties — death, Rule 25(a), M.R.Civ.P. (see Title 25, ch. 20).

27-1-502. Survival of counterclaim — death or assignment. When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been set up, the two demands shall be deemed compensated so far as they equal each other and neither can be deprived of the benefit thereof by the assignment or death of the other.

History: En. Sec. 48, p. 52, Bannack Stat.; re-en. Sec. 48, p. 143, L. 1867; re-en. Sec. 58, p. 39, Cod. Stat. 1871; re-en. Sec. 89, p. 61, L. 1877; re-en. Sec. 89, 1st Div. Rev. Stat. 1879; re-en. Sec. 91, 1st Div. Comp. Stat. 1887; amd. Sec. 698, C. Civ. Proc. 1895; re-en. Sec. 6548, Rev. C. 1907; re-en. Sec. 9145, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 440; re-en. Sec. 9145, R.C.M. 1935; R.C.M. 1947, 93-3409.

27-1-503. What defenses to action survive assignment of right to action. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any setoff or other defense existing at the time of or before notice of the assignment, but this section shall apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. Sec. 5, p. 44, Bannack Stat.; re-en. Sec. 5, p. 136, L. 1867; re-en. Sec. 5, p. 28, Cod. Stat. 1871; re-en. Sec. 5, p. 40, L. 1877; re-en. Sec. 5, 1st Div. Rev. Stat. 1879; re-en. Sec. 5, 1st Div. Comp. Stat. 1887; re-en. Sec. 571, C. Civ. Proc. 1895; re-en. Sec. 6478, Rev. C. 1907; re-en. Sec. 9068, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 368; re-en. Sec. 9068, R.C.M. 1935; amd. Sec. 11-157, Ch. 264, L. 1963; R.C.M. 1947, 93-2802.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

27-1-504 through 27-1-510 reserved.

27-1-511. Right of minor to bring civil action or other proceeding. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114.

Cross-References

Parties — infants or incompetent persons, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

When guardian necessary — how appointed, 25-31-602.

Small claims procedure — parties — representation, 25-34-105, 25-35-505.

Enforcement of minor's rights, 41-1-202.

27-1-512. Action by parent or guardian for injury to child or ward. Either parent may maintain an action for the injury to a minor child and a guardian for injury to a ward when such injury is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or, if such person be employed by another person who is responsible for his conduct, also against such other person.

History: En. Sec. 11, p. 44, Bannack Stat.; amd. Sec. 11, p. 136, L. 1867; re-en. Sec. 11, p. 29, Cod. Stat. 1871; re-en. Sec. 13, p. 42, L. 1877; re-en. Sec. 13, 1st Div. Rev. Stat. 1879; re-en. Sec. 13, 1st Div. Comp. Stat. 1887; amd. Sec. 578, C. Civ. Proc. 1895; re-en. Sec. 6485, Rev. C. 1907; re-en. Sec. 9075, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 376; re-en. Sec. 9075, R.C.M. 1935; amd. Sec. 52, Ch. 535, L. 1975; R.C.M. 1947, 93-2809; amd. Sec. 3, Ch. 449, L. 1987.

27-1-513. Action for wrongful death. When injuries to and the death of one person are caused by the wrongful act or neglect of another, the personal representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his conduct, then also against such other person.

History: En. Sec. 1, p. 561, Cod. Stat. 1871; en. Sec. 14, p. 42, L. 1877; re-en. Sec. 14, 1st Div. Rev. Stat. 1879; re-en. Sec. 14, 1st Div. Comp. Stat. 1887; re-en. Sec. 579, C. Civ. Proc. 1895; re-en. Sec. 6486, Rev. C. 1907; re-en. Sec. 9076, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 377; re-en. Sec. 9076, R.C.M. 1935; R.C.M. 1947, 93-2810(part); amd. Sec. 4, Ch. 449, L. 1987.

Cross-References

Damages for personal injury or wrongful death not to be stated, 25-4-311.

Request for statement of damages — response, 25-4-312.

Notice to defendant when no request for statement of damages made, 25-4-313.

Permissive delivery of statement of damages with summons, 25-4-314.

27-1-514. Who may sue for whose seduction. (1) The rights of personal relations forbid the seduction of a spouse, child, orphan, or servant.

(2) Either parent may prosecute as plaintiff for the seduction of the child and the guardian for the seduction of the ward, though the child or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards and there be no loss of service.

(3) An unmarried person may prosecute as plaintiff an action for his or her own seduction and may recover therein such damages, pecuniary or exemplary, as are assessed in such person's favor.

History: (1)En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; Sec. 64-209, R.C.M. 1947; (2)En. Sec. 12, p. 41, L. 1877; re-en. Sec. 12, 1st Div. Rev. Stat. 1879; re-en. Sec. 12, 1st Div. Comp. Stat. 1887; re-en. Sec. 577, C. Civ. Proc. 1895; re-en. Sec. 6484, Rev. C. 1907; re-en. Sec. 9074, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 375; re-en. Sec. 9074, R.C.M. 1935; amd. Sec. 51, Ch. 535, L. 1975; Sec. 92-2808, R.C.M. 1947; (3)En. Sec. 11, p. 41, L. 1877; re-en. Sec. 11, 1st Div. Rev. Stat. 1879; re-en. Sec. 11, 1st Div. Comp. Stat. 1887; re-en. Sec. 576, C. Civ. Proc. 1895; re-en. Sec. 6483,

Rev. C. 1907; re-en. Sec. 9073, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 374; re-en. Sec. 9073, R.C.M. 1935; amd. Sec. 50, Ch. 535, L. 1975; Sec. 93-2807, R.C.M. 1947; R.C.M. 1947, 64-209(3), 93-2807, 93-2808.

Cross-References

Damages for seduction, 27-1-322.

27-1-515. Protection of personal relations — abduction. The rights of personal relations forbid:

(1) the abduction of a parent from a child;

(2) the abduction or enticement of a wife from her husband or a husband from his wife, of a child from a parent or from a guardian entitled to its custody, or of a servant from a master.

History: En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; R.C.M. 1947, 64-209(1), (2).

Cross-References

Unlawful restraint, 45-5-301.

27-1-516. Injury to servant. The rights of personal relations forbid any injury to a servant which affects the servant's ability to serve the master.

History: En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; R.C.M. 1947, 64-209(4).

Cross-References

Agency, Title 28, ch. 10.

27-1-517 through 27-1-519 reserved.

27-1-520. Action against successful bidder — failure to pay standard prevailing wages or unemployment insurance or to carry workers' compensation insurance. A person who loses a competitive bid on a construction contract may maintain an action for damages against a successful bidder if the successful bidder does not pay standard prevailing wages on a contract where payment of the standard prevailing wage rate is required by Title 18, chapter 2, part 4, does not contribute to the state unemployment insurance fund, as required by 39-51-1103, or does not pay workers' compensation premiums, as required by 39-71-401. If the bids are sealed or for any other reason kept confidential, the person who solicited the bids shall, on request by a bidder who indicates an intent to sue under this section, inform the bidder of the identity of the next lowest valid bidder after the successful bidder. Upon proof that payment by the successful bidder of standard prevailing wages, workers' compensation premiums, and contributions to the state unemployment insurance fund for the job would have increased the successful bidder's bid amount in excess of the plaintiff's bid, the plaintiff may recover damages. The measure of damages is the same as provided in 27-1-311, except that the total amount assessed against the successful bidder by all litigants may not exceed 10% of the successful bidder's bid.

History: En. Sec. 1, Ch. 478, L. 1991.

Part 6

Abolition of Certain Causes of Action

Part Cross-References

Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

27-1-601. Cause of action for alienation of affections abolished. All civil causes of action for alienation of affections of husband or wife are hereby abolished.

History: En. Sec. 1, Ch. 200, L. 1963; R.C.M. 1947, 17-1201(part).

27-1-602. Cause of action for breach of promise abolished — right to damages for fraud and unjust enrichment preserved. All causes of action for breach of contract to marry are hereby abolished. However, where a plaintiff has suffered actual damage due to fraud or deceit or a defendant has been unjustly enriched, the plaintiff may maintain an action for fraud or deceit or unjust enrichment and recover therein only the actual damage proved or for the benefit wrongfully obtained or restitution of property wrongfully withheld where such action otherwise is maintainable under existing law.

History: En. Sec. 2, Ch. 200, L. 1963; R.C.M. 1947, 17-1202.

Cross-References

Obligations which cannot be specifically enforced, 27-1-412.

27-1-603. Acts within Montana not to give rise to abolished cause of action. No act done within this state after July 1, 1963, shall operate to give rise, either within or without this state, to any of the causes of action abolished by this part. No contract to marry which shall be made within this state after July 1, 1963, shall operate to give rise, either within or without this state, to any cause of action for breach thereof. It is the intention of this part to fix the effect, status, and character of such acts and contracts and to render them ineffective to support or give rise to any such causes of action within or without this state.

History: En. Sec. 3, Ch. 200, L. 1963; R.C.M. 1947, 17-1203.

27-1-604. Litigation and threat of litigation prohibited. Effective July 1, 1963, it shall be unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court in this state any pleading or paper setting forth or seeking to recover upon any cause of action abolished or barred by this part, whether such cause of action arose within or without this state.

History: En. Sec. 4, Ch. 200, L. 1963; R.C.M. 1947, 17-1204.

27-1-605. Agreements settling or compromising abolished causes of action. (1) All contracts and instruments of every kind which, after July 1, 1963, may be executed within this state in payment, satisfaction, settlement, or compromise of any claim or cause of action abolished or barred by this part, whether such claim or cause of action arose within or without this state, are hereby declared to be contrary to the public policy of this state and absolutely void.

(2) It shall be unlawful to:

(a) cause, induce, or procure any person to execute such a contract or instrument;

(b) cause, induce, or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action;

(c) receive, take, or accept any such money or thing of value in such payment, satisfaction, settlement, or compromise; or

(d) commence or cause to be commenced, either as litigant or attorney, in any court of this state any proceeding or action seeking to enforce or recover upon any such contract or instrument knowing it to be such, whether the same shall have been executed within or without this state.

(3) However, this section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this part or any contracts or instruments heretofore executed or to the bona fide holder in due course of any negotiable instrument which may be executed after July 1, 1963.

History: **En. Sec. 5, Ch. 200, L. 1963; R.C.M. 1947, 17-1205.**

27-1-606. Criminal penalty. Any person who violates any of the provisions of this part is punishable upon conviction therefor by a fine of not less than $100 or more than $1,000 or imprisonment for a term of not less than 1 year or more than 5 years, in the discretion of the court.

History: **En. Sec. 6, Ch. 200, L. 1963; R.C.M. 1947, 17-1206; amd. Sec. 8, Ch. 12, L. 1979.**

Part 7

Liability

Part Cross-References

Weed management district liability restrictions, 7-22-2111.

Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

27-1-701. Liability for negligence as well as willful acts. Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself.

History: **En. Sec. 2296, Civ. C. 1895; re-en. Sec. 5077, Rev. C. 1907; re-en. Sec. 7579, R.C.M. 1921; Cal. Civ. C. Sec. 1714; Based on Field Civ. C. Sec. 853; re-en. Sec. 7579, R.C.M. 1935; R.C.M. 1947, 58-607; amd. Sec. 9, Ch. 12, L. 1979; amd. Sec. 2, Ch. 209, L. 1987; amd. Sec. 2, Ch. 397, L. 1987; amd. Sec. 2, Ch. 437, L. 1987; amd. Sec. 7, Ch. 440, L. 1987; amd. Sec. 2, Ch. 508, L. 1987; amd. Sec. 3, Ch. 516, L. 1987.**

Cross-References

Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

Disputable presumptions, 26-1-602.

General duty of care, 28-1-201.

Liability for trade secret violations, 30-14-403, 30-14-404.

Liability of fellow employee for intentional and malicious acts or omissions, 39-71-413.

Liability for damage to property by oil and gas developer, 82-10-505.

Liability of irrigation districts, 85-7-2212.

27-1-702. Comparative negligence — extent to which contributory negligence bars recovery in action for damages. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property if such negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

History: En. 58-607.1 by Sec. 1, Ch. 60, L. 1975; R.C.M. 1947, 58-607.1; amd. Sec. 1, Ch. 505, L. 1987.

Cross-References

Pleading contributory negligence as an affirmative defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

Liability for death or injury to railroad employees, 69-14-1006.

27-1-703. Multiple defendants — determination of liability. (1) Except as provided in subsections (2) and (3), whenever the negligence of any party in any action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) Any party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the amount of negligence attributable to him, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, third-party defendants, persons released from liability by the claimant, persons immune from liability to the claimant, and any other persons who have a defense against the claimant. The trier of fact shall apportion the percentage of negligence of all such persons. However, in attributing negligence among persons, the trier

of fact may not consider or determine any amount of negligence on the part of any injured person's employer or coemployee to the extent that such employer or coemployee has tort immunity under the Workers' Compensation Act or the Occupational Disease Act of this state, of any other state, or of the federal government. Contribution shall be proportional to the liability of the parties against whom recovery is allowed. Nothing contained in this section shall make any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to him.

History: En. 58-607.2 by Sec. 1, Ch. 433, L. 1977; R.C.M. 1947, 58-607.2; amd. Sec. 1, Ch. 523, L. 1981; amd. Sec. 2, Ch. 505, L. 1987.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Nonliability of employer insured under Workers' Compensation Act, 39-71-411.

27-1-704 through 27-1-709 reserved.

27-1-710. Civil liability for injuries involving alcohol consumption. (1) The purpose of this section is to set statutory criteria governing the liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) Except as provided in 16-6-305, a person or entity furnishing an alcoholic beverage may not be found liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a provision or a violation of a provision of Title 16.

(3) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

(b) the consumer was visibly intoxicated; or

(c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

History: En. Sec. 1, Ch. 1, Sp. L. March 1986; amd. Sec. 2, Ch. 448, L. 1989.

Cross-References

"Alcoholic beverage" defined, 16-1-106.

Unlawfully selling or giving alcoholic beverage to minor or person under the influence, 16-3-301, 16-6-304, 16-6-305, 45-5-622, 45-5-623.

27-1-711. Liability of minor or person of unsound mind for own torts — exemplary damages. A minor or person of unsound mind is civilly liable for a wrong done by him but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113.

Cross-References

When exemplary damages allowed, 27-1-221.

27-1-712. Liability for damages for deceit. (1) One who willfully deceives another with intent to induce him to alter his position to his injury or risk is liable for any damage which he thereby suffers.

(2) A deceit, within the meaning of subsection (1), is either:

(a) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(b) the assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true;

(c) the suppression of a fact by one who is bound to disclose it or who gives information of other facts which are likely to mislead for want of communication of that fact; or

(d) a promise made without any intention of performing it.

(3) One who practices a deceit with intent to defraud the public or a particular class of persons is deemed to have intended to defraud every individual in that class who is actually misled by the deceit.

History: (1)En. Sec. 2291, Civ. C. 1895; re-en. Sec. 5072, Rev. C. 1907; re-en. Sec. 7574, R.C.M. 1921; Cal. Civ. C. Sec. 1709; Field Civ. C. Sec. 848; re-en. Sec. 7574, R.C.M. 1935; Sec. 58-602, R.C.M. 1947; (2)En. Sec. 2292, Civ. C. 1895; re-en. Sec. 5073, Rev. C. 1907; re-en. Sec. 7575, R.C.M. 1921; Cal. Civ. C. Sec. 1710; Field Civ. C. Sec. 849; re-en. Sec. 7575, R.C.M. 1935; Sec. 58-603, R.C.M. 1947; (3)En. Sec. 2293, Civ. C. 1895; re-en. Sec. 5074, Rev. C. 1907; re-en. Sec. 7576, R.C.M. 1921; Cal. Civ. C. Sec. 1711; Field Civ. C. Sec. 850; re-en. Sec. 7576, R.C.M. 1935; Sec. 58-604, R.C.M. 1947; R.C.M. 1947, 58-602, 58-603, 58-604.

Cross-References

Actual and constructive fraud, 28-2-404 through 28-2-406.

Unfair trade practices and consumer protection, Title 30, ch. 14.

27-1-713. Duty to restore thing wrongfully acquired or retained. One who obtains a thing without the consent of its owner, by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse must restore it to the person from whom it was thus obtained unless he has acquired a title thereto superior to that of such other person or unless the transaction was corrupt and unlawful on both sides. The restoration required by this section must be made without demand except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

History: Ap. p. Sec. 2294, Civ. C. 1895; re-en. Sec. 5075, Rev. C. 1907; re-en. Sec. 7577, R.C.M. 1921; Cal. Civ. C. Sec. 1712; Field Civ. C. Sec. 851; re-en. Sec. 7577, R.C.M. 1935; Sec. 58-605, R.C.M. 1947; Ap. p. Sec. 2295, Civ. C. 1895; re-en. Sec. 5076, Rev. C. 1907; re-en. Sec. 7578, R.C.M. 1921; Cal. Civ. C. Sec. 1713; Field Civ. C. Sec. 852; re-en. Sec. 7578, R.C.M. 1935; Sec. 58-606, R.C.M. 1947; R.C.M. 1947, 58-605, 58-606.

27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care or assistance.

(2) Subsection (1) includes a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for such volunteer services does not exceed 25% of his gross annual income or $3,000 a calendar year, whichever is greater.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, such refusal does not constitute gross negligence or a willful or wanton act or omission.

History: En. Sec. 1, Ch. 93, L. 1963; R.C.M. 1947, 17-410; amd. Sec. 1, Ch. 390, L. 1979; amd. Sec. 1, Ch. 330, L. 1985; amd. Sec. 1, Ch. 133, L. 1987.

Cross-References

Fire protection, Title 7, ch. 33.

Volunteer Firefighters' Compensation Act, Title 19, ch. 12.

Limits on liability of health care provider in emergency situations, 27-1-734.

27-1-715. Liability of owner of vicious dog. (1) The owner of any dog which shall without provocation bite any person while such person is on or in a public place or lawfully on or in a private place, including the property of the owner of such dog, located within an incorporated city or town shall be liable for such damages as may be suffered by the person bitten regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.

(2) A person is lawfully upon the private property of such owner within the meaning of this section when he is on such property in the performance of any duty imposed upon him by the laws of this state or by the laws or postal regulations of the United States of America or when he is on such property as an invitee or licensee of the person lawfully in possession of the property.

History: En. Sec. 1, Ch. 113, L. 1943; R.C.M. 1947, 17-409.

Cross-References

Local government control of dogs, Title 7, ch. 23.

27-1-716. Immunity of persons donating food for free distribution. (1) As used in this section, the following definitions apply:

(a) "Donor" means any processor, distributor, wholesaler, or retailer of perishable or canned foods or farmer or individual who donates food for free distribution.

(b) "Gleaner" means a person who harvests for free distribution perishable food that has been donated by the owner.

(c) "Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition.

Perishable food includes but is not limited to fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruit and vegetables, grains, and foods that have been refrigerated or frozen.

(d) "Canned food" means any food that has been commercially processed and prepared for human consumption.

(2) Notwithstanding any other provision of law:

(a) a good faith donor of any canned or perishable food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization for free distribution or a gleaner of perishable food, apparently fit for human consumption, for free distribution is not subject to any criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by gross negligence or intentional misconduct of the donor or gleaner;

(b) a bona fide charitable or nonprofit organization that in good faith receives food, apparently fit for human consumption, and distributes it at no charge is not subject to any criminal penalty or civil damages resulting from the condition of the food unless an injury is caused by gross negligence or intentional misconduct of the organization.

(3) Immunity under this section extends to the good faith donation of canned or perishable foods that, while apparently fit for human consumption, are not readily marketable due to appearance, grade, surplus, or other considerations, as well as to those foods that are readily marketable.

(4) If the ultimate distributor charges any fee for the food received from a donor or gleaner, such fact shall not deprive the donor or gleaner of the immunity provided under this section.

(5) This section does not restrict the authority of any lawful agency to inspect, regulate, or ban the use of donated food for human consumption.

History: En. Sec. 1, Ch. 259, L. 1981.

27-1-717. Issuing a bad check or stopping payment — civil liability. (1) A person who issues a check, draft, or an order for the payment of money is liable for damages in a civil action as provided in subsection (2) to the person to whom the check, draft, or order is issued if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The amount of damages awarded pursuant to subsection (1) shall be an amount equal to the greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of such check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

(4) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the drawer provided for in 30-3-422 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

History: En. Secs. 1, 2, Ch. 611, L. 1983; amd. Sec. 1, Ch. 557, L. 1985; amd. Sec. 229, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (4)(c) substituted "obligation" for "engagement" and "30-3-422" for "30-3-413".

27-1-718. Civil penalty for shoplifting. (1) An adult or emancipated minor, as defined in 20-25-501, who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to his own use without having paid the purchase price thereof is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of the greater of $100 or the retail value of the goods, not to exceed $500. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to his own use without having paid the purchase price thereof, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of $100 or the retail value of the goods, not to exceed $500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of family services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section.

History: En. Sec. 1, Ch. 506, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 739, L. 1991.

Compiler's Comments

1991 Amendment: Near end of (1), after "amount of", and in (2), after "equal to", inserted "the greater of $100 or".

Cross-References

Photographs of items allegedly taken or converted — admissibility procedure, 26-1-608.

Criminal offense of theft, 45-6-301.

27-1-719. Liability of seller of product for physical harm to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is

liable for physical harm caused by the product to the ultimate user or consumer or to his property if:

(a) the seller is engaged in the business of selling such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of his product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and such misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

History: En. Sec. 1, Ch. 466, L. 1987.

27-1-720. Liability — defect in design of firearms or ammunition. (1) In a products liability action, no firearm or ammunition may be considered defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged.

(2) For purposes of this section:

(a) the potential of a firearm or ammunition to cause serious injury, damage, or death when discharged does not make the product defective in design; and

(b) injuries or damages resulting from the discharge of a firearm or ammunition are not proximately caused by its potential to cause serious injury, damage, or death but are proximately caused by the actual discharge of the product.

(3) The provisions of this section do not affect a products liability cause of action based upon the improper selection of design alternatives.

History: En. Sec. 1, Ch. 359, L. 1987.

27-1-721 through 27-1-730 reserved.

27-1-731. Individual immunity for and indemnification of ditch company employees. (1) As used in this section:

(a) "ditch company" means a private, not-for-profit irrigation ditch or water user cooperative, corporation, association, or organization;

(b) "employee" means a director, officer, or employee of a ditch company.

(2) An employee of a ditch company is not individually liable for actions and omissions within the course and scope of his employment or position, except as provided in subsection (6). The immunity granted by this subsection does not apply to the liability of a not-for-profit cooperative, corporation, association, or organization.

(3) Upon receiving service of a summons and complaint in an action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the ditch company. If the employee has no supervisor, he shall give notice of the action to the attorney of the ditch company defending legal actions of that type. Except as provided in subsection (6), the ditch company shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the ditch company. The ditch company shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the ditch company refuses or is unable to provide a direct defense, the employee may retain other counsel. Except as provided in subsection (6), the ditch company shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may otherwise be payable under this section.

(4) The employee must be indemnified by the ditch company for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a ditch company is a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In an action against a ditch company, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the ditch company acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) The employee may not be defended or indemnified by the ditch company for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment or position;

(b) the conduct of the employee is a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the ditch company; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If no judicial determination has been made applying the exclusions provided in subsection (6), the ditch company may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the ditch company concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the ditch company is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the ditch company had no obligation to defend the employee. The ditch company has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the ditch company under this subsection.

History: En. Sec. 1, Ch. 397, L. 1987.

27-1-732. Immunity of nonprofit corporation officers, directors, and volunteers. (1) No officer, director, or volunteer of a nonprofit corporation is individually liable for any action or omission made in the course and scope of his official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954; or

(b) a corporation or organization which is eligible for or has been granted by the department of revenue tax exempt status under the provisions of 15-31-102.

History: En. Sec. 1, Ch. 437, L. 1987.

27-1-733. Liability of nonprofit organizations and their employees for injuries suffered in sponsored rodeo and similar events. (1) No nonprofit organization sponsoring a rodeo, cowboy polo, cutting horse, O-Mok-See, trail riding, horse packing, horse show, or jackpot roping event, or employee of the organization, is liable for injuries suffered by a contestant as a result of his voluntary participation in the event except for injuries caused by a willful or wanton act of the sponsoring organization or its employees.

(2) For purposes of this section, a minor is considered to be in voluntary participation in an event if:

(a) he has provided written consent to participate in the event; and

(b) the consent is approved by one of the minor's parents or by his legal guardian.

History: En. Sec. 1, Ch. 508, L. 1987.

27-1-734. Limits on liability of health care provider in emergency situations. A physician licensed under Title 37, chapter 3, a nurse licensed under Title 37, chapter 8, or a hospital licensed under Title 50, chapter 5, rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is liable for civil damages for acts or omissions committed in providing such emergency obstetrical care or assistance only to the extent that those damages are caused by gross negligence or by willful or wanton acts or omissions.

History: En. Sec. 4, Ch. 493, L. 1989; amd. Sec. 24, Ch. 550, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former (2) that read: "(2) The limitations on liability provided in subsection (1) do not apply in the following cases:

(a) The physician, nurse, or hospital had provided prior medical diagnosis or treatment to the patient for a condition having a bearing on or relevance to the treatment of the obstetrical condition that required emergency services.

(b) Before rendering emergency obstetrical services, the physician, nurse, or hospital had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer to provide obstetrical care for the patient." Amendment effective July 1, 1991.

Cross References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

27-1-735. Emergency communications systems — lawful release of information. (1) It is lawful for a telephone company or telecommunications provider to release in good faith to personnel of emergency communications systems information not in the public record, including but not limited to unpublished or unlisted telephone numbers, provided that the subscriber information is released only in response to an emergency call involving an immediate threat to personal safety or property.

(2) A local exchange telephone company with less than 15,000 subscribers that provides emergency communications systems and related services and its employees and agents are not liable in tort to any person for damages alleged to have been caused by the design, development, installation, maintenance, or provision of emergency communications systems or related services unless the acts or omissions of the entities or persons constitute gross negligence or willful or wanton misconduct. This subsection does not provide immunity from liability in a products liability action.

(3) For the purposes of this section, "subscribers" means persons, partnerships, corporations, or other entities acquiring telecommunications services from a telecommunications provider. There is one subscriber for each billed line of a telecommunications provider.

History: En. Sec. 1, Ch. 452, L. 1991.

Compiler's Comments

Effective Date: Section 3, Ch. 452, L. 1991, provided that this section is effective April 16, 1991.

Part 8

Libel and Slander

Part Cross-References

Freedom of speech, expression, and press, Art. II, sec. 7, Mont. Const.

27-1-801. Defamation — how effected. Defamation is effected by:

(1) libel;

(2) slander.

History: En. Sec. 31, Civ. C. 1895; re-en. Sec. 3601, Rev. C. 1907; re-en. Sec. 5689, R.C.M. 1921; Cal. Civ. C. Sec. 44; Field Civ. C. Sec. 28; re-en. Sec. 5689, R.C.M. 1935; R.C.M. 1947, 64-202.

27-1-802. Libel defined. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation.

History: En. Sec. 32, Civ. C. 1895; re-en. Sec. 3602, Rev. C. 1907; re-en. Sec. 5690, R.C.M. 1921; Cal. Civ. C. Sec. 45; Field Civ. C. 29; re-en. Sec. 5690, R.C.M. 1935; R.C.M. 1947, 64-203.

27-1-803. Slander defined. Slander is a false and unprivileged publication other than libel which:

(1) charges any person with crime or with having been indicted, convicted, or punished for crime;

(2) imputes in him the present existence of an infectious, contagious, or loathsome disease;

(3) tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;

(4) imputes to him impotence or want of chastity; or

(5) by natural consequence causes actual damage.

History: En. Sec. 33, Civ. C. 1895; re-en. Sec. 3603, Rev. C. 1907; re-en. Sec. 5691, R.C.M. 1921; Cal. Civ. C. Sec. 46; Field Civ. C. Sec. 30; re-en. Sec. 5691, R.C.M. 1935; R.C.M. 1947, 64-204.

27-1-804. What communications are privileged. A privileged publication is one made:

(1) in the proper discharge of an official duty;

(2) in any legislative or judicial proceeding or in any other official proceeding authorized by law;

(3) in a communication without malice to a person interested therein by one who is also interested or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent or who is requested by the person interested to give the information;

(4) by a fair and true report without malice of a judicial, legislative, or other public official proceeding or of anything said in the course thereof.

History: En. Sec. 34, Civ. C. 1895; re-en. Sec. 3604, Rev. C. 1907; re-en. Sec. 5692, R.C.M. 1921; Cal. Civ. C. Sec. 47; Based on Field Civ. C. Sec. 31; re-en. Sec. 5692, R.C.M. 1935; R.C.M. 1947, 64-208.

27-1-805 through 27-1-810 reserved.

27-1-811. When owner of radio station not liable for material broadcast. No person, firm, or corporation owning or operating a radio broadcasting station is liable under the law of defamation on account of having made its broadcasting facilities available to any person, including but not limited to a candidate for public office, for discussion of controversial or other subjects in the absence of proof of actual malice on the part of such owner or operator.

History: En. Sec. 1, Ch. 122, L. 1939; R.C.M. 1947, 64-205; amd. Sec. 10, Ch. 12, L. 1979.

27-1-812. Right of owner to require prior submission of text to be broadcast. Any person, firm, or corporation owning or operating a radio broadcasting station shall have the right but shall not be compelled to require the submission and permanent filing in such station of a copy of the complete address or other form of expression, if in words, intended to be broadcast over such station, not more than 48 hours before the time of the intended broadcast thereof.

History: En. Sec. 2, Ch. 122, L. 1939; R.C.M. 1947, 64-206.

27-1-813. Liability of person broadcasting — liability of owner for broadcast prepared by station. Nothing in 27-1-811 or 27-1-812 may be construed to relieve any person broadcasting over a radio station from liability under the law of defamation or to relieve any person, firm, or corporation owning or operating a radio broadcasting station from liability under the law of defamation on account of any broadcast prepared or made by such person, firm, or corporation or by any officer or employee thereof in the course of his employment. Whenever such an owner or operator is liable on account of a broadcast and two or more broadcasting stations were connected simultaneously or by transcription, film, metal tape, or other approved or adapted use for joint operation in the making of the broadcast, liability is limited solely to the person, firm, or corporation owning or operating the radio station which originated the broadcast.

History: En. Sec. 3, Ch. 122, L. 1939; R.C.M. 1947, 64-207; amd. Sec. 11, Ch. 12, L. 1979.

27-1-814 through 27-1-817. Repealed. Sec. 62, Ch. 12, L. 1979.

Compiler's Comments
Histories of Repealed Sections: **27-1-814 through 27-1-817.** En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971; R.C.M. 1947, 64-207.1.

27-1-818. Media management to be given opportunity to publish correction prior to action for libel or slander. In order to claim punitive damages because of any defamatory publication in or broadcast on any newspaper, magazine, periodical, radio or television station, or cable television system, the defamed person shall first give those alleged to be responsible or liable for the publication or broadcast a reasonable opportunity to correct the defamatory matter. Such opportunity shall be given by notice in writing specifying the article or broadcast and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty.

History: **En. Sec. 1, Ch. 569, L. 1979.**

27-1-819. What constitutes a reasonable time for correction. The first issue of a newspaper, magazine, or periodical published after the expiration of 1 week from the receipt of the notice provided for in 27-1-818 is within a reasonable time for correction. In the case of radio and television stations and cable television systems, a broadcast made at the same time of day as the broadcast complained of and of at least equal duration which is made within 7 days following receipt of such notice is within a reasonable time for correction.

History: **En. Sec. 2, Ch. 569, L. 1979.**

27-1-820. Content of correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction constitutes a correction; otherwise the publication or broadcast of the defamed person's statement of the true facts or so much thereof as is not defamatory of another, scurrilous, or otherwise improper for publication or broadcast, published or broadcast as his statement, constitutes a correction within the meaning of 27-1-818 through 27-1-821.

History: **En. Sec. 3, Ch. 569, L. 1979.**

27-1-821. Extent to which a correction is a defense upon trial. If it appears upon trial that the publication or broadcast complained of was made under honest mistake, then a correction timely published or broadcast without comment in a position and type as prominent as the alleged libel or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration constitutes a defense against the recovery of punitive damages.

History: **En. Sec. 4, Ch. 569, L. 1979.**

Parts 9 and 10 reserved

Part 11

Liability of Mental Health Professionals

27-1-1101. Definition. As used in this part, "mental health professional" means:

(1) a certified professional person as defined in 53-21-106;
(2) a physician licensed under Title 37, chapter 3;
(3) a professional counselor licensed under Title 37, chapter 23;
(4) a psychologist licensed under Title 37, chapter 17; or
(5) a social worker licensed under Title 37, chapter 22.

History: **En. Sec. 1, Ch. 214, L. 1987.**

27-1-1102. Duty to warn of violent behavior. A mental health professional has a duty to warn of or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The duty is discharged by a mental health professional if he has:

(1) made reasonable efforts to communicate the threat to the victim and notify the law enforcement agency closest to the patient's or the victim's residence of the threat of violence; and

(2) supplied a requesting law enforcement agency with any information he has concerning the threat of violence.

History: En. Sec. 2, Ch. 214, L. 1987.

27-1-1103. Immunity from liability. (1) No monetary liability and no cause of action may arise against any mental health professional for failing to predict, warn of, or take precautions to provide protection from a patient's threatened violent behavior unless he has a duty to warn of violent behavior, as provided in 27-1-1102.

(2) No monetary liability and no cause of action may arise against any mental health professional for disclosing confidential or privileged information in an effort to discharge a duty arising under 27-1-1102.

History: En. Sec. 3, Ch. 214, L. 1987.

CHAPTER 2

STATUTES OF LIMITATIONS

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Part 1

General Provisions

27-2-101. Definition of action. The word "action", as used in this chapter, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; R.C.M. 1947, 93-2720; amd. Sec. 12, Ch. 12, L. 1979.

27-2-102. When action commenced. (1) For the purposes of statutes relating to the time within which an action must be commenced:

(a) a claim or cause of action accrues when all elements of the claim or cause exist or have occurred, the right to maintain an action on the claim or cause is complete, and a court or other agency is authorized to accept jurisdiction of the action;

(b) an action is commenced when the complaint is filed.

(2) Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.

(3) The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have

been discovered or, in the exercise of due diligence, should have been discovered by the injured party if:

(a) the facts constituting the claim are by their nature concealed or self-concealing; or

(b) before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.

(4) Subsection (3) does not apply to actions involving the limitations contained in 27-2-205.

History: En. Sec. 540, C. Civ. Proc. 1895; re-en. Sec. 6457, Rev. C. 1907; re-en. Sec. 9047, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 350; re-en. Sec. 9047, R.C.M. 1935; R.C.M. 1947, 93-2701; amd. Sec. 13, Ch. 12, L. 1979; amd. Sec. 1, Ch. 441, L. 1987.

Cross-References

Commencement of action, Rule 3, M.R.Civ.P. (see Title 25, ch. 20).

27-2-103. Actions by state subject to limitations. The limitations prescribed in part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties.

History: En. Sec. 49, p. 50, L. 1877; re-en. Sec. 49, 1st Div. Rev. Stat. 1879; re-en. Sec. 49, 1st Div. Comp. Stat. 1887; re-en. Sec. 520, C. Civ. Proc. 1895; re-en. Sec. 6453, Rev. C. 1907; re-en. Sec. 9043, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 345; re-en. Sec. 9043, R.C.M. 1935; R.C.M. 1947, 93-2615; amd. Sec. 14, Ch. 12, L. 1979.

27-2-104. Application of this state's statutes of limitations — actions against nonresidents. When a cause of action that does not involve the title to or possession of real property within the state accrues against a person who is not then a resident of the state, an action is governed by part 5 of this chapter.

History: En. Sec. 556, C. Civ. Proc. 1895; re-en. Sec. 6473, Rev. C. 1907; re-en. Sec. 9063, R.C.M. 1921; re-en. Sec. 9063, R.C.M. 1935; R.C.M. 1947, 93-2717; amd. Sec. 8, Ch. 293, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of first sentence, after "an action", substituted "is governed by part 5 of this chapter" for remainder of sentence and former (1) and (2) that read: "cannot be brought thereon in a court of the state against him or his personal representative after the expiration of the time limited by the laws of his residence for bringing a like action except by a resident of the state and in one of the following cases:

(1) where the cause of action originally accrued in favor of a resident of the state;

(2) where, before the expiration of the time so limited, the person in whose favor it originally accrued was or became a resident of the state or the cause of action was assigned to and thereafter continuously owned by a resident of the state"; and made minor changes in style.

27-2-105. Periods of limitation. All civil actions must be commenced within the periods prescribed in part 2 except when another statute specifically provides a different limitation.

History: En. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; R.C.M. 1947, 93-2601; amd. Sec. 15, Ch. 12, L. 1979.

Cross-References

Limitation on action against museum, 22-3-521.

Limitation on commencing action, 25-1-102.

Part 2

Time Limits on Specific Kinds of Actions

27-2-201. Actions upon judgments. (1) The period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is deemed, in such case, to have accrued when final judgment was rendered.

History: Ap. p. Sec. 1, p. 172, L. 1889; amd. Sec. 511, C. Civ. Proc. 1895; re-en. Sec. 6444, Rev. C. 1907; re-en. Sec. 9028; R.C.M. 1921; Cal. C. Civ. Proc. Sec. 336; re-en. Sec. 9028, R.C.M. 1935; Sec. 93-2602, R.C.M. 1947; Ap. p. Sec. 513, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 157, L. 1901; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6446, Rev. C. 1907; re-en. Sec. 9030, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9030, R.C.M. 1935; amd. Sec. 13, Ch. 263, L. 1975; Sec. 93-2604, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2602(1), 93-2604(2).

Cross-References

Time limit for issuing execution, 25-13-101.

Execution after 6 years, 25-13-102.

27-2-202. Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.

(2) The period prescribed for the commencement of an action upon a contract, account, or promise not founded on an instrument in writing is within 5 years.

(3) The period prescribed for the commencement of an action upon an obligation or liability, other than a contract, account, or promise, not founded upon an instrument in writing is within 3 years.

History: Ap. p. Sec. 1, p. 172, L. 1889; re-en. Sec. 512, C. Civ. Proc. 1895; re-en. Sec. 6445, Rev. C. 1907; re-en. Sec. 9029, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 337; re-en. Sec. 9029, R.C.M. 1935; Sec. 93-2603, R.C.M. 1947; Ap. p. Sec. 513, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 157, L. 1901; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6446, Rev. C. 1907; re-en. Sec. 9030, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9030, R.C.M. 1935; amd. Sec. 13, Ch. 263, L. 1975; Sec. 93-2604, R.C.M. 1947; Ap. p. Sec. 514, C. Civ. Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2603, 93-2604(1), 93-2605(3); amd. Sec. 16, Ch. 12, L. 1979.

Cross-References

Contracts not written in plain language, limitation on remedies, 30-14-1112.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

27-2-203. Actions for relief on ground of fraud or mistake. The period prescribed for the commencement of an action for relief on the ground of fraud or mistake is within 2 years, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

History: Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2607(4).

27-2-204. Tort actions — general and personal injury. (1) Except as provided in 27-2-216, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years.

History: (1)En. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; (2)En. Sec. 514, C. Civ. Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; (3)En. Sec. 515, C. Civ. Proc. 1895; re-en. Sec. 6448, Rev. C. 1907; re-en. Sec. 9032, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9032, R.C.M. 1935; Sec. 93-2606, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2605(2), (3), 93-2606(3); amd. Sec. 17, Ch. 12, L. 1979; amd. Sec. 1, Ch. 158, L. 1989.

27-2-205. Actions for medical malpractice. (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, shall, except as provided in subsection (2), be commenced within 3 years after the date of injury or 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may such action be commenced after 5 years from the date of injury. However, this time limitation shall be tolled for any period during which there has been a failure to disclose any act, error, or omission upon which such action is based and which is known to the plaintiff or through the use of reasonable diligence subsequent to said act, error, or omission would have been known to him.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of his injury, the period of limitations in subsection (1) begins to run when the minor reaches his eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian.

History: En. Sec. 1, Ch. 328, L. 1971; amd. Sec. 1, Ch. 191, L. 1973; R.C.M. 1947, 93-2624; amd. Sec. 1, Ch. 499, L. 1987; amd. Sec. 38, Ch. 83, L. 1989.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

27-2-206. Actions for legal malpractice. An action against an attorney licensed to practice law in Montana or a paralegal assistant or a legal intern employed by an attorney based upon the person's alleged professional negligent act or for error or omission in the person's practice must be commenced within 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the act, error, or omission, whichever occurs last, but in no case may the action be commenced after 10 years from the date of the act, error, or omission.

History: En. 93-2625 by Sec. 1, Ch. 220, L. 1977; R.C.M. 1947, 93-2625.

27-2-207. Injuries involving property. Within 2 years is the period prescribed for the commencement of an action for:

(1) injury to or waste or trespass on real or personal property;

(2) taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property;

(3) killing or injuring stock by a railroad corporation or company.

History: Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2607(part).

Cross-References

Limitation on action against museum for damage to loaned property or to recover property, 22-3-521.

27-2-208. Actions for damages arising out of work on improvements to real property. (1) Except as provided in subsections (2) and (3), no action to recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of or land surveying done in connection with any improvement to real property shall be commenced more than 10 years after completion of such improvement.

(2) Notwithstanding the provisions of subsection (1), an action for such damages for an injury which occurred during the 10th year after such

completion may be commenced within 1 year after the occurrence of such injury.

(3) The limitation prescribed by this section shall not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement at the time a right of action arises.

(4) As used in this section, the term "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier.

(5) Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

History: En. Secs. 1, 2, 3, 4, 5, Ch. 60, L. 1971; R.C.M. 1947, 93-2619, 93-2620, 93-2621, 93-2622, 93-2623.

27-2-209. Actions against local government or local government official. (1) The period prescribed for the commencement of an action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office or by the omission of an official duty, including the nonpayment of money collected upon an execution, is within 3 years; but this subsection does not apply for an action for an escape.

(2) The period prescribed for the commencement of an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process is within 1 year.

(3) Actions for claims against a county which have been rejected by the county commissioners must be commenced within 6 months after the first rejection thereof by such board.

(4) The period prescribed for the commencement of an action against a municipal corporation for damages or injuries to property caused by a mob or riot is within 1 year.

History: Ap. p. Sec. 514, C. Civ. Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933; re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2605(1), 93-2608(part), 93-2609(2).

Cross-References

Limitation of actions against state or political subdivision, 2-9-302.

27-2-210. Actions arising from the seizure or sale of property for taxes. (1) Within 1 year is the period prescribed for the commencement of an action against an officer or officer de facto:

(a) to recover any goods, wares, merchandise, or other property seized by any such officer in his official capacity as tax collector;

(b) to recover the price or value of any goods, wares, merchandise, or other personal property so seized;

(c) for damages for the seizure, detention, or sale of or injury to any goods, wares, merchandise, or other personal property seized; or

(d) for damages done to any person or property in making any such seizure.

(2) The period prescribed for the commencement of an action to recover stock sold for a delinquent assessment is within 6 months.

(3) (a) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within 3 years after the commencement of commercial production of oil, gas, or other minerals from the land.

(b) Nothing contained in subsection (3)(a) shall change the nature of a royalty interest prior to actual production. The purpose of subsection (3)(a) is to place a limitation on actions seeking royalty interests reserved by the county, once production has commenced, without in any way affecting the validity of any claims a county may have prior to the commencement of production.

History: Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933; re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2608(3), 93-2609(1); amd. Sec. 3, Ch. 458, L. 1985; (3)(b)En. Sec. 1, Ch. 458, L. 1985.

Cross-References

Tax sales, Title 15, ch. 17.

Ownership interests in land sold for taxes, Title 15, ch. 18.

27-2-211. Actions to enforce penalty or forfeiture or other statutory liability. (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the

date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud.

History: **Ap. p. Sec. 515, C. Civ. Proc. 1895; re-en. Sec. 6448, Rev. C. 1907; re-en. Sec. 9032, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9032, R.C.M. 1935; Sec. 93-2606, R.C.M. 1947; Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 554, C. Civ. Proc. 1895; re-en. Sec. 6471, Rev. C. 1907; re-en. Sec. 9061, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 359; re-en. Sec. 9061, R.C.M. 1935; Sec. 93-2715, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2606(1), (2), 93-2607(1), 93-2608(part), 93-2715; amd. Sec. 18, Ch. 12, L. 1979; amd. Sec. 1, Ch. 190, L. 1981.**

27-2-212. Actions arising from wrongful removal or exclusion from office. Within 6 months is the period prescribed for the commencement of:

(1) any action for the restoration to office by any person wrongfully or illegally removed or excluded from office;

(2) any suit for the recovery of salary or other emoluments of office by any person having been wrongfully or illegally removed or excluded from office.

History: **Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933; re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2609(3), (4).**

27-2-213. Actions against banks. (1) Except as provided in subsection (2), there are no time limitations on the commencement of actions to recover money or other property deposited with any bank, banker, trust company, or savings and loan corporation, association, or society.

(2) Any action to obtain, set aside, or question in any manner any stated or settled account between any bank, banker, trust company, or savings and loan corporation, association, or society and any depositor with such bank, banker, trust company, or savings and loan corporation, association, or society must be commenced within 5 years from the date of the statement of such account. Any action based upon or arising from the payment by any bank, banker, trust company, or savings and loan corporation, association, or society of a forged, raised, or otherwise altered check, order, or promissory note out of the deposit, money, or property of the plaintiff must be commenced within 3 years from the day on which the plaintiff or his agent, assignee, or personal representative was notified of such payment or received such check, order, or note marked "paid".

History: **En. Sec. 523, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 78, L. 1905; re-en. Sec. 6456, Rev. C. 1907; re-en. Sec. 9046, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 348; re-en. Sec. 9046, R.C.M. 1935; R.C.M. 1947, 93-2618; amd. Sec. 19, Ch. 12, L. 1979.**

27-2-214. Actions for mesne profits of real property. The period prescribed for the commencement of an action for mesne profits of real property is within 10 years.

History: **Ap. p. Sec. 1, p. 172, L. 1889; amd. Sec. 511, C. Civ. Proc. 1895; re-en. Sec. 6444, Rev. C. 1907; re-en. Sec. 9028; R.C.M. 1921; Cal. C. Civ. Proc. Sec. 336; re-en. Sec. 9028, R.C.M. 1935; Sec. 93-2602, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2602(2).**

27-2-215. Renumbered 27-2-231 by Code Commissioner, 1989.

27-2-216. Tort actions — childhood sexual abuse. (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

(4) The provisions of 27-2-401 apply to this section.

History: **En. Sec. 2, Ch. 158, L. 1989.**

27-2-217 through 27-2-230 reserved.

27-2-231. Other actions. An action for relief not otherwise provided for must be commenced within 5 years after the cause of action accrues.

History: **En. Sec. 518, C. Civ. Proc. 1895; re-en. Sec. 6451, Rev. C. 1907; re-en. Sec. 9041, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 343; re-en. Sec. 9041, R.C.M. 1935; R.C.M. 1947, 93-2613; amd. Sec. 20, Ch. 12, L. 1979; Sec. 27-2-215, MCA 1987; redes. 27-2-231 by Code Commissioner, 1989.**

Part 3

Accrual of Cause of Action

27-2-301. When demand necessary to perfect right to action. Where a right exists but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the demand is made, except where the right grows out of the receipt or detention of money or property by an agent, trustee, attorney, or other person acting in a fiduciary capacity, the time must be computed from the time when the person having the right to make the demand has actual knowledge of the facts upon which that right depends.

History: **En. Sec. 551, C. Civ. Proc. 1895; re-en. Sec. 6468, Rev. C. 1907; re-en. Sec. 9058, R.C.M. 1921; re-en. Sec. 9058, R.C.M. 1935; R.C.M. 1947, 93-2712; amd. Sec. 2, Ch. 441, L. 1987.**

27-2-302. Actions based on mutual accounts. In an action brought to recover a balance due upon a mutual, open, and current account where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

History: **En. Sec. 48, p. 50, L. 1877; re-en. Sec. 48, 1st Div. Rev. Stat. 1879; re-en. Sec. 48, 1st Div. Comp. Stat. 1887; re-en. Sec. 519, C. Civ. Proc. 1895; re-en. Sec. 6452, Rev. C. 1907; re-en. Sec. 9042, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 344; re-en. Sec. 9042, R.C.M. 1935; R.C.M. 1947, 93-2614.**

27-2-303. Actions for waste, trespass, or injury committed during mining work or exploration. When waste, trespass, or injury is committed by reason of underground work upon any mining claim or seismic exploration, location, spacing, drilling, equipping, producing, or other operation related to exploration or production of oil, gas, water, geothermal resources, or other minerals, the cause of action is not considered to have accrued until the discovery by the aggrieved party of the facts constituting such waste, trespass, or injury.

History: **En. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; R.C.M. 1947, 93-2607(part); amd. Sec. 21, Ch. 12, L. 1979.**

27-2-304. Actions involving personal property accruing after death and before issuance of letters of administration. The time within which an action must be commenced by an executor or administrator to recover personal property taken after the death of a testator or intestate and before the issuing of letters of administration or to recover damages for taking, detaining, or injuring personal property within the same period shall be computed from:

(1) the time of issuing such letters if they are issued within 5 years of the death;

(2) 5 years after the death if the letters have not then been issued.

History: **En. Sec. 545, C. Civ. Proc. 1895; re-en. Sec. 6462, Rev. C. 1907; re-en. Sec. 9052, R.C.M. 1921; re-en. Sec. 9052, R.C.M. 1935; R.C.M. 1947, 93-2706(part); amd. Sec. 22, Ch. 12, L. 1979.**

Cross-References

Statutes of Limitation on decedent's cause of action — applicability, 72-3-123.

Personal representative — standing to sue, 72-3-604.

Part 4

Circumstances Which Extend Period of Limitations

27-2-401. When person entitled to bring action is under a disability. (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor, seriously mentally ill, or imprisoned on a criminal charge or under a sentence for a term less than for life, the time of such disability is not a part of the time limited for commencing the action. However, the time so limited cannot be extended more than 5 years by any such disability except minority.

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded was under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of such disability, maintain an action to recover damages. In such action he may recover such sum or the value of such property as he would have received upon the final distribution of the estate if an action had been seasonably commenced by the personal representative.

(3) No person may avail himself of a disability unless it existed when his right of action or entry accrued.

(4) When two or more disabilities coexist at the time the right of action or entry accrues, the limitation does not attach until all are removed.

History: (1)En. Sec. 14, p. 468, Bannack Stat.; re-en. Sec. 12, p. 517, Cod. Stat. 1871; repealed Sec. 674, p. 215, L. 1877; re-en. Sec. 542, C. Civ. Proc. 1895; re-en. Sec. 6459, Rev. C. 1907; re-en. Sec. 9049, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 352; re-en. Sec. 9049, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1977; Sec. 93-2703, R.C.M. 1947; (2)En. Sec. 545, C. Civ. Proc. 1895; re-en. Sec. 6462, Rev. C. 1907; re-en. Sec. 9052, R.C.M. 1921; re-en. Sec. 9052, R.C.M. 1935; Sec. 93-2706, R.C.M. 1947; (3)En. Sec. 19, p. 469, Bannack Stat.; re-en. Sec. 17, p. 518, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 549, C. Civ. Proc. 1895; re-en. Sec. 6466, Rev. C. 1907; re-en. Sec. 9056, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 357; re-en. Sec. 9056, R.C.M. 1935; Sec. 93-2710, R.C.M. 1947; (4)En. Sec. 20, p. 469, Bannack Stat.; re-en. Sec. 18, p. 518, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 550, C. Civ. Proc. 1895; re-en. Sec. 6467, Rev. C. 1907; re-en. Sec. 9057, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 358; re-en. Sec. 9057, R.C.M. 1935; Sec. 93-2711, R.C.M. 1947; R.C.M. 1947, 93-2703, 93-2706(part), 93-2710, 93-2711; amd. Sec. 23, Ch. 12, L. 1979; amd. Sec. 3, Ch. 441, L. 1987.

27-2-402. When defendant is out of state. When the cause of action accrues against a person who is out of the state and cannot be served with process, the action may be commenced within the term herein limited after his return to the state; and if after the cause of action accrues he departs from the state and cannot be served with process, the time of his absence is not part of the time limited for the commencement of the action.

History: En. Sec. 13, p. 468, Bannack Stat.; re-en. Sec. 11, p. 517, Cod. Stat. 1871; re-en. Sec. 50, p. 50, L. 1877; re-en. Sec. 50, 1st Div. Rev. Stat. 1879; re-en. Sec. 50, 1st Div. Comp. Stat. 1887; re-en. Sec. 541, C. Civ. Proc. 1895; re-en. Sec. 6458, Rev. C. 1907; re-en. Sec. 9048, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 351; re-en. Sec. 9048, R.C.M. 1935; R.C.M. 1947, 93-2702; amd. Sec. 4, Ch. 441, L. 1987.

27-2-403. Actions involving aliens in time of war. When a person is an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

History: En. Sec. 16, p. 469, Bannack Stat.; re-en. Sec. 14, p. 517, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 546, C. Civ. Proc. 1895; re-en. Sec. 6463, Rev. C. 1907; re-en. Sec. 9053, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 354; re-en. Sec. 9053, R.C.M. 1935; R.C.M. 1947, 93-2707.

27-2-404. When a party dies before action commenced. (1) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced by his representatives after the expiration of that time and within 1 year from his death.

(2) If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within 1 year after the issuing of letters testamentary or of administration. If a person against whom a cause of action exists dies without the state, the time which elapses between his death and the expiration of 1 year after the issuing within the state of letters testamentary or letters of administration is not a part of the time limited for the commencement of an action therefor against his executor or administrator.

History: Ap. p. Sec. 15, p. 468, Bannack Stat.; re-en. Sec. 13, p. 517, Cod. Stat. 1871; repealed Sec. 674, p. 215, L. 1877; re-en. Sec. 543, C. Civ. Proc. 1895; re-en. Sec. 6460, Rev. C. 1907; re-en. Sec. 9050, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 353; re-en. Sec. 9050, R.C.M. 1935; Sec. 93-2704, R.C.M. 1947; Ap. p. Sec. 544, C. Civ. Proc. 1895; re-en. Sec. 6461, Rev. C. 1907; re-en. Sec. 9051, R.C.M. 1921; re-en. Sec. 9051, R.C.M. 1935; Sec. 93-2705, R.C.M. 1947; R.C.M. 1947, 93-2704, 93-2705.

27-2-405. When controversy submitted to arbitration. Where the persons who might be adverse parties in an action have entered into a written agreement to submit to arbitration or to refer the cause of action or a controversy in which it might be available or have entered into a written submission thereof to arbitrators and, before an award or other determination thereupon, the agreement or submission is revoked, so as to render it ineffectual, by the death of either party thereto or by the act of the person against whom the action might have been brought or the execution thereof or the remedy upon an award or other determination thereunder is stayed by injunction or other order procured by him from a competent court or judge, the time which has elapsed between the entering into the written submission or agreement and the revocation thereof or the expiration of the stay is not a part of the time limited for the commencement of the action.

History: En. Sec. 552, C. Civ. Proc. 1895; re-en. Sec. 6469, Rev. C. 1907; re-en. Sec. 9059, R.C.M. 1921; re-en. Sec. 9059, R.C.M. 1935; R.C.M. 1947, 93-2713.

Cross-References

Arbitration, Title 27, ch. 5.

27-2-406. When action stayed by injunction or other order or statutory prohibition. When the commencement of an action is stayed by injunction or other order of the court or judge or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

History: En. Sec. 18, p. 469, Bannack Stat.; re-en. Sec. 16, p. 518, Cod. Stat. 1871; re-en. Sec. 52, p. 50, L. 1877; re-en. Sec. 52, 1st Div. Rev. Stat. 1879; re-en. Sec. 52, 1st Div. Comp. Stat. 1887; amd. Sec. 548, C. Civ. Proc. 1895; re-en. Sec. 6465, Rev. C. 1907; re-en. Sec. 9055, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 356; re-en. Sec. 9055, R.C.M. 1935; R.C.M. 1947, 93-2709.

27-2-407. When action terminated or judgment reversed. If an action is commenced within the time limited therefor and a judgment therein is reversed on appeal without awarding a new trial or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff or, if he dies and the cause of action survives, his representative may commence a new action for the same cause after the expiration of the time so limited and within 1 year after such a reversal or termination.

History: En. Sec. 17, p. 469, Bannack Stat.; re-en. Sec. 15, p. 518, Cod. Stat. 1871; re-en. Sec. 51, p. 50, L. 1877; re-en. Sec. 51, 1st Div. Rev. Stat. 1879; re-en. Sec. 51, 1st Div. Comp. Stat. 1887; amd. Sec. 547, C. Civ. Proc. 1895; re-en. Sec. 6464, Rev. C. 1907; re-en. Sec. 9054, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 355; re-en. Sec. 9054, R.C.M. 1935; R.C.M. 1947, 93-2708.

27-2-408. Assertion of counterclaim. (1) A defendant is entitled to assert against a plaintiff, by pleading or amendment, any counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against him.

(2) The time period between the commencement and termination of an action is not part of the time limit for the commencement of an action by a defendant to recover for a counterclaim or to interpose it in that action or another action by the same plaintiff or a successor arising out of the same transaction or occurrence.

History: En. Sec. 553, C. Civ. Proc. 1895; re-en. Sec. 6470, Rev. C. 1907; re-en. Sec. 9060, R.C.M. 1921; re-en. Sec. 9060, R.C.M. 1935; R.C.M. 1947, 93-2714; amd. Sec. 24, Ch. 12, L. 1979; amd. Sec. 5, Ch. 441, L. 1987.

27-2-409. Acknowledgment of debt or part payment. (1) An acknowledgment or the part payment of a debt is sufficient evidence to cause the relevant statute of limitations to begin running anew.

(2) An acknowledgment must be contained in some writing signed by the party to be charged thereby.

(3) Part payment is any payment of principal or interest.

History: En. Sec. 21, p. 469, Bannack Stat.; re-en. Sec. 19, p. 518, Cod. Stat. 1871; re-en. Sec. 53, p. 50, L. 1877; re-en. Sec. 53, 1st Div. Rev. Stat. 1879; re-en. Sec. 53, 1st Div. Comp. Stat. 1887; amd. Sec. 555, C. Civ. Proc. 1895; re-en. Sec. 6472, Rev. C. 1907; re-en. Sec. 9062, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 360; re-en. Sec. 9062, R.C.M. 1935; R.C.M. 1947, 93-2716; amd. Sec. 25, Ch. 12, L. 1979; amd. Sec. 6, Ch. 441, L. 1987.

Part 5

Conflict of Laws

27-2-501. Short title. This part may be cited as the "Uniform Conflict of Laws — Limitations Act".

History: En. Sec. 1, Ch. 293, L. 1991.

27-2-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Claim" means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute.

(2) "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them.

History: En. Sec. 2, Ch. 293, L. 1991.

27-2-503. Conflict of laws — limitation periods. (1) Except as provided by 27-2-505, if a claim is substantively based:

(a) upon the law of one other state,. the limitation period of that state applies; or

(b) upon the law of more than one state, the limitation period of one of those states chosen by this part applies.

(2) The limitation period of Montana applies to all other claims.

History: En. Sec. 3, Ch. 293, L. 1991.

27-2-504. Rules applicable to computation of limitation period. If the statute of limitations of another state applies to the assertion of a claim in Montana, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period but its statutes and other rules of law governing conflict of laws do not apply.

History: En. Sec. 4, Ch. 293, L. 1991.

27-2-505. Unfairness. If a court determines that the limitation period of another state applicable under 27-2-503 and 27-2-504 is substantially different from the limitation period of Montana and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of Montana applies.

History: En. Sec. 5, Ch. 293, L. 1991.

27-2-506. Existing and future claims. This part applies to claims:

(1) accruing after October 1, 1991; or

(2) asserted in a civil action or proceeding more than 1 year after October 1, 1991, but do not revive a claim barred before October 1, 1991.

History: En. Sec. 6, Ch. 293, L. 1991.

27-2-507. Uniformity of application and construction. This part must be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 7, Ch. 293, L. 1991.

CHAPTERS 3 AND 4

RESERVED

CHAPTER 5

UNIFORM ARBITRATION ACT

Part 1 — Submission to Arbitration

27-5-101 through 27-5-105. Repealed.
27-5-106 through 27-5-110 reserved.
27-5-111. Short title.
27-5-112. Uniformity of interpretation.
27-5-113. Application to labor agreements.
27-5-114. Validity of arbitration agreement — exceptions.
27-5-115. Proceedings to compel or stay arbitration.

Part 2 — Action by Arbitrators

27-5-201 through 27-5-203. Repealed.
27-5-204 through 27-5-210 reserved.
27-5-211. Appointment of arbitrators.
27-5-212. Majority action by arbitrators.
27-5-213. Hearing.
27-5-214. Representation by attorney.
27-5-215. Witnesses, subpoenas, and depositions.
27-5-216. Award.
27-5-217. Change of award by arbitrators.
27-5-218. Fees and expenses of arbitration.

Part 3 — Procedure Following Award

27-5-301 through 27-5-304. Repealed.
27-5-305 through 27-5-310 reserved.
27-5-311. Confirmation of award by court.
27-5-312. Vacating an award.
27-5-313. Modification or correction of award by court.
27-5-314. Judgment on award — costs.
27-5-315 through 27-5-320 reserved.
27-5-321. Applications to court — how made.
27-5-322. Jurisdiction of district court.
27-5-323. Venue.
27-5-324. Appeals.

Chapter Cross-References

Pleading arbitration as an affirmative defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 1

Submission to Arbitration

Part Cross-References

Multistate Tax Compact — Article IX arbitration provisions, 15-1-601.

Arbitration of stream portage rights, 23-2-311.

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Medical malpractice claims — effect of arbitration, 27-6-105.

Arbitration of farm mutual insurance claims, 33-4-411.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Arbitration of threshers' lien claims, 71-3-801.

Arbitration of hail insurance claims, 80-2-243.

Arbitration of watercourse construction projects adversely affecting fish and game habitat, 87-5-505.

27-5-101 through 27-5-105. Repealed. Sec. 28, Ch. 684, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

27-5-101. En. Sec. 302, p. 106, Bannack Stat.; re-en. Sec. 358, p. 207, L. 1867; re-en. Sec. 432, p. 122, Cod. Stat. 1871; re-en. Sec. 459, p. 163, L. 1877; re-en. Sec. 459, 1st Div. Rev. Stat. 1879; re-en. Sec. 472, 1st Div. Comp. Stat. 1887; re-en. Sec. 2270, C. Civ. Proc. 1895; re-en. Sec. 7365, Rev. C. 1907; re-en. Sec. 9972, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1281; re-en. Sec. 9972, R.C.M. 1935; R.C.M. 1947, 93-201-1.

27-5-102. En. Sec. 303, p. 106, Bannack Stat.; re-en. Sec. 359, p. 207, L. 1867; re-en. Sec. 433, p. 122, Cod. Stat. 1871; re-en. Sec. 460, p. 163, L. 1877; re-en. Sec. 460, 1st Div. Rev. Stat. 1879; re-en. Sec. 473, 1st Div. Comp. Stat. 1887; re-en. Sec. 2271, C. Civ. Proc. 1895; re-en. Sec. 7366, Rev. C. 1907; re-en. Sec. 9973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1282; re-en. Sec. 9973, R.C.M. 1935; R.C.M. 1947, 93-201-2.

27-5-103. En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).

27-5-104. En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).

27-5-105. En. Sec. 311, p. 109, Bannack Stat.; re-en. Sec. 367, p. 209, L. 1867; re-en. Sec. 441, p. 123, Cod. Stat. 1871; re-en. Sec. 468, p. 165, L. 1877; re-en. Sec. 468, 1st Div. Rev. Stat. 1879; re-en. Sec. 481, 1st Div. Comp. Stat. 1887; re-en. Sec. 2279, C. Civ. Proc. 1895; re-en. Sec. 7374, Rev. C. 1907; re-en. Sec. 9981, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1290; re-en. Sec. 9981, R.C.M. 1935; R.C.M. 1947, 93-201-10.

27-5-106 through 27-5-110 reserved.

27-5-111. Short title. This chapter may be cited as the "Uniform Arbitration Act".

History: En. Sec. 1, Ch. 684, L. 1985.

27-5-112. Uniformity of interpretation. This chapter must be construed to effectuate its general purpose to make uniform the law of those states that enact it.

History: En. Sec. 2, Ch. 684, L. 1985.

27-5-113. Application to labor agreements. Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of this chapter if the agreement so specifies, except 27-5-115, 27-5-311, 27-5-312(1) and (3) through (5), 27-5-313, and 27-5-322 apply in each case.

History: En. Sec. 3, Ch. 684, L. 1985; amd. Sec. 1, Ch. 258, L. 1991.

Compiler's Comments

1991 Amendment: In exception clause inserted references to 27-5-115, 27-5-311, and 27-5-322; and made minor changes in style. Amendment effective March 29, 1991.

Cross-References

Arbitration of unlawful termination of public employee, 2-18-621.

Arbitration of public employees' collective bargaining issue, 39-31-306, 39-31-310, 39-31-311.

Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

27-5-114. Validity of arbitration agreement — exceptions. (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the agreement is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. Except as permitted under subsection (3), this subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

(b) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $5,000 or less;

(c) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or

(d) claims for workers' compensation.

(3) A written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(4) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration.

History: En. Sec. 4, Ch. 684, L. 1985; amd. Sec. 1, Ch. 236, L. 1989; amd. Sec. 1, Ch. 611, L. 1989.

Cross-References

Arbitration of unlawful termination of public employee, 2-18-621.

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of public employees' collective bargaining issue, 39-31-306, 39-31-310, 39-31-311.

Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Arbitration of threshers' lien claims, 71-3-801.

27-5-115. Proceedings to compel or stay arbitration. (1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

History: En. Sec. 5, Ch. 684, L. 1985.

Cross-References

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Statute of Limitations tolled by submission to arbitration, 27-2-405.

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

Part 2

Action by Arbitrators

27-5-201 through 27-5-203. Repealed. Sec. 28, Ch. 684, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

27-5-201. En. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; R.C.M. 1947, 93-201-5(part).

27-5-202. Ap. p. Sec. 305, p. 107, Bannack Stat.; re-en. Sec. 361, p. 208, L. 1867; re-en. Sec. 435, p. 122, Cod. Stat. 1871; re-en. Sec. 462, p. 164, L. 1877; re-en. Sec. 462, 1st Div. Rev. Stat. 1879; re-en. Sec. 475, 1st Div. Comp. Stat. 1887; re-en. Sec. 2273, C. Civ. Proc. 1895; re-en. Sec. 7368, Rev. C. 1907; re-en. Sec. 9975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1284; re-en. Sec. 9975, R.C.M. 1935; Sec. 93-201-4, R.C.M. 1947; Ap. p. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; Sec. 93-201-5, R.C.M. 1947; R.C.M. 1947, 93-201-4, 93-201-5(part).

27-5-203. En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part).

27-5-204 through 27-5-210 reserved.

27-5-211. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

History: En. Sec. 6, Ch. 684, L. 1985.

27-5-212. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

History: En. Sec. 7, Ch. 684, L. 1985.

27-5-213. Hearing. Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

History: En. Sec. 8, Ch. 684, L. 1985.

27-5-214. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver of this right prior to the proceeding or hearing is ineffective.

History: En. Sec. 9, Ch. 684, L. 1985.

27-5-215. Witnesses, subpoenas, and depositions. (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms

designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under this chapter.

(4) Fees for attendance as a witness are the same as for a witness in the district court.

History: En. Sec. 10, Ch. 684, L. 1985.

27-5-216. Award. (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within such time as the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

History: En. Sec. 11, Ch. 684, L. 1985.

Cross-References

Arbitration and award as affirmative defense, Rule 8(c), M.R.Civ.P. (see Title 25, ch. 20).

No specific performance of arbitration agreement prior to 1985, 27-1-412 (prior to 1985 amendment).

Partner's authority to submit partnership claim to arbitration, 35-10-301.

Arbitration of new motor vehicle warranty disputes, 61-4-515.

27-5-217. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313.

History: En. Sec. 12, Ch. 684, L. 1985.

27-5-218. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

History: En. Sec. 13, Ch. 684, L. 1985.

Cross-References

Cost of arbitration between firefighter and public employer, 39-34-106.

Part 3

Procedure Following Award

27-5-301 through 27-5-304. Repealed. Sec. 28, Ch. 684, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

27-5-301. En. Sec. 308, p. 108, Bannack Stat.; re-en. Sec. 364, p. 208, L. 1867; re-en. Sec. 438, p. 123, Cod. Stat. 1871; re-en. Sec. 465, p. 165, L. 1877; re-en. Sec. 465, 1st Div. Rev. Stat. 1879; re-en. Sec. 478, 1st Div. Comp. Stat. 1887; re-en. Sec. 2276, C. Civ. Proc. 1895; re-en. Sec. 7371, Rev. C. 1907; re-en. Sec. 9978, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1287; re-en. Sec. 9978, R.C.M. 1935; R.C.M. 1947, 93-201-7.

27-5-302. En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1288; re-en. Sec. 9979, R.C.M. 1935; R.C.M. 1947, 93-201-8.

27-5-303. En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part); amd. Sec. 26, Ch. 12, L. 1979.

27-5-304. En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1289; re-en. Sec. 9980, R.C.M. 1935; R.C.M. 1947, 93-201-9.

27-5-305 through 27-5-310 reserved.

27-5-311. Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

History: En. Sec. 14, Ch. 684, L. 1985.

27-5-312. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of 27-5-213, as to prejudice substantially the rights of a party; or

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History: En. Sec. 15, Ch. 684, L. 1985.

27-5-313. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History: En. Sec. 16, Ch. 684, L. 1985.

27-5-314. Judgment on award — costs. (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

History: En. Sec. 17, Ch. 684, L. 1985.

27-5-315 through 27-5-320 reserved.

27-5-321. Applications to court — how made. Except as otherwise provided, an application to the court under this chapter must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

History: En. Sec. 18, Ch. 684, L. 1985.

27-5-322. Jurisdiction of district court. The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

History: En. Sec. 19, Ch. 684, L. 1985.

Cross-References

Statute of Limitations tolled by submission to arbitration, 27-2-405.

27-5-323. Venue. An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto.

History: En. Sec. 20, Ch. 684, L. 1985.

27-5-324. Appeals. (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under 27-5-115;

(b) an order granting an application to stay arbitration made under 27-5-115(2);

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a rehearing; or

(f) a judgment entered pursuant to the provisions of this chapter.

(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

History: En. Sec. 21, Ch. 684, L. 1985.

Cross-References

Statute of Limitations tolled by submission to arbitration, 27-2-405.

CHAPTER 6

MONTANA MEDICAL LEGAL PANEL ACT

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Chapter Cross-References

Nonliability for peer review, Title 37, ch. 2, part 2.

Unprofessional conduct by physician, 37-3-322.

Revocation or suspension of physician's license, 37-3-323.

Penalties for violations of physician's licensing law, 37-3-325.

Injunctive relief for violations of physician's licensing laws, 37-3-326.

Part 1

General Provisions

27-6-101. Short title. This chapter may be cited as the "Montana Medical Legal Panel Act".

History: En. 17-1301 by Sec. 1, Ch. 449, L. 1977; R.C.M. 1947, 17-1301; amd. Sec. 1, Ch. 376, L. 1983.

27-6-102. Purpose. The purpose of this chapter is to prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.

History: En. 17-1302 by Sec. 2, Ch. 449, L. 1977; R.C.M. 1947, 17-1302.

27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) "Health care facility" means a facility (other than a governmental infirmary but including a university or college infirmary) licensed as a health care facility under Title 50, chapter 5.

(3) "Health care provider" means a physician, a dentist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

History: En. 17-1303 by Sec. 3, Ch. 449, L. 1977; R.C.M. 1947, 17-1303; amd. Sec. 2, Ch. 376, L. 1983; amd. Sec. 1, Ch. 332, L. 1985; amd. Sec. 1, Ch. 195, L. 1987; amd. Sec. 1, Ch. 96, L. 1989.

Cross-References

Medicine — regulation and licensing, Title 37, ch. 3.

Hospitals and related facilities, Title 50, ch. 5.

27-6-104. Creation of panel. The Montana medical legal panel is created. The panel is attached to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(part); amd. Sec. 3, Ch. 376, L. 1983.

27-6-105. What claims panel to review. The panel shall review all malpractice claims or potential claims against health care providers covered by this chapter except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to April 19, 1977.

History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(part).

Cross-References
Arbitration, Title 27, ch. 5.

27-6-106. Immunity of panel members and witnesses from civil liability. Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this chapter.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(5).

Cross-References
Liability exposure, Title 2, ch. 9, part 1.

Part 2

Administration of Act

27-6-201. Appointment, term, and salary of director. The director of the panel shall be appointed by the executive director of the Montana medical association, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of, and the director's salary shall be set by, the executive director of the Montana medical association, subject to the approval of the chief justice.

History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(4).

27-6-202. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(2) The panel shall maintain adequate offices, in which its records shall be kept and its official business transacted.

History: En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(4), (5).

27-6-203. Compensation of panel and staff. (1) All members of the panel shall be paid a salary in the amount of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) All members of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503, but such expenses shall be approved by the director before payment is made.

History: En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(1), (2).

27-6-204. Authority to adopt rules. The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the medical review panel. No rules may be adopted, however, which require a party to make a monetary payment as a condition to bringing a malpractice claim before the medical review panel.

History: En. 17-1313 by Sec. 13, Ch. 449, L. 1977; R.C.M. 1947, 17-1313.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

27-6-205. Powers of panel. The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by this chapter, the issuance of subpoenas in connection with the administration of this chapter, and the performance of all other acts required to fairly and effectively administer this chapter.

History: En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(3).

27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment must be annually set by the director and must be apportioned among physicians, dentists, hospitals, and other health care providers by group. As to the group of all physicians, the group of all dentists, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' and dentists' annual registration or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees.

History: En. 17-1306 by Sec. 6, Ch. 449, L. 1977; R.C.M. 1947, 17-1306(part); amd. Sec. 1, Ch. 6, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 376, L. 1983; amd. Sec. 2, Ch. 332, L. 1985; amd. Sec. 2, Ch. 195, L. 1987.

27-6-207. Panel audits. (1) The panel must be audited by or at the direction of the legislative auditor in accordance with the powers and duties set forth in 5-13-304 and 5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual surcharge or assessment provided for in 27-6-206.

(2) A copy of each audit report of the panel must be furnished to the supreme court.

(3) The cost of any audit of the panel performed pursuant to this section must be paid by the panel.

History: En. Sec. 1, Ch. 96, L. 1987.

Part 3

Preliminary Procedure

27-6-301. How cases submitted. Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the claimant or his attorney, to the director of the panel.

History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(3); amd. Sec. 3, Ch. 332, L. 1985.

27-6-302. Contents of application — waiver of confidentiality of medical and dental records. The application shall contain the following:

(1) a statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians, dentists, and hospitals having contact with the claimant and all witnesses;

(2) a statement authorizing the panel to obtain access to all medical, dental, and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

History: En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(part); amd. Sec. 3, Ch. 195, L. 1987.

27-6-303. Amendments to application. Amendments to the application may be authorized by rule.

History: En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(part); amd. Sec. 4, Ch. 332, L. 1985.

27-6-304. Copies of application to professional societies when vicarious liability claimed. In instances where applications are received employing a theory of respondeat superior or some other derivative theory of recovery, the director shall forward the application to the state professional societies, associations, or licensing boards of both the individual health care provider whose alleged malpractice caused the application to be filed and the health care provider named a respondent as employer, master, or principal.

History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(3).

27-6-305. Service on health care provider. Upon receipt of an application for review, the director or his delegate shall cause to be served a true copy of the application on the health care providers involved. Service shall be effected by mailing a certified copy of the application to the health care provider at the provider's last-known address, postage prepaid, by certified mail, return receipt requested.

History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(part); amd. Sec. 5, Ch. 376, L. 1983.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

27-6-306. Health care provider's appearance and answer — waiver of confidentiality of records. (1) If a health care provider involved chooses to retain legal counsel, his attorney shall informally enter his appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical, dental, and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose.

History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(part); amd. Sec. 4, Ch. 195, L. 1987.

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Discovery in contested cases, 2-4-602.

Doctor-patient privilege, 26-1-805.

Nonliability for peer review — evidential privilege — application to nonprofit corporations, 37-2-201.

Uniform health care information, Title 50, ch. 16, part 5.

27-6-307. Assistance to claimant in obtaining expert consultation. The panel director shall cooperate fully with the claimant in retaining, to consult with the claimant, upon payment of a reasonable fee by the claimant, in claims involving:

(1) a physician, a physician qualified in the field of medicine involved; or

(2) a dentist, a dentist qualified in the field of dentistry involved.

History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(4); amd. Sec. 5, Ch. 195, L. 1987.

27-6-308. Director to furnish panel members with documents. At least 10 days prior to the hearing, the director shall furnish to each panel member copies of all claims, briefs, medical or dental records, and other documents the director considers necessary.

History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(8); amd. Sec. 6, Ch. 195, L. 1987.

Cross-References

Contested case hearings, 2-4-612.

Part 4

Formation and Composition of Panel

27-6-401. Composition of panel. (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six panel members shall sit in review of each case. Three panel members who are physicians and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. Three panel members who are dentists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more dentists. If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

(2) In all other cases, two of the panel members must be physicians, one panel member must be an administrator of the same type of health care facility, and three panel members must be attorneys, except that when a claim is heard against a dentist, a dentist must be substituted for one of the physicians on the panel.

History: Ap. p. 17-1304 by Sec. 4, Ch. 449, L. 1977; Sec. 17-1304, R.C.M. 1947; Ap. p. 17-1309 by Sec. 9, Ch. 449, L. 1977; Sec. 17-1309, R.C.M. 1947; R.C.M. 1947, 17-1304(2), 17-1309(4), (5); amd. Sec. 5, Ch. 332, L. 1985; amd. Sec. 7, Ch. 195, L. 1987.

Cross-References

"Health care provider" defined, 27-6-103.

Agency, Title 28, ch. 10.

Licensing of medical practitioners, Title 37, ch. 3.

Licensing of attorneys, Title 37, ch. 61.

27-6-402. Selection of panelists. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall, within 14 days from the date of transmittal of the application, each select 12 proposed panelists from which 3 will be selected.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select 12 persons from the health care provider's profession and, where applicable, from persons specializing in the same field or discipline as the health care provider.

History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(1), (2); amd. Sec. 27, Ch. 12, L. 1979; amd. Sec. 6, Ch. 376, L. 1983.

27-6-403. Panel in cases involving multiple defendants. Whenever there are multiple defendants, the case against each health care provider may be reviewed by a separate panel or, at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all parties defendant.

History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(3).

27-6-404. Disqualification of panel member. (1) Any member shall disqualify himself from consideration of any case in which, by virtue of his circumstances, he feels his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association or state licensing board or the state bar, as the case may be. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed within 15 days of the transmittal by the director, under 27-6-402, of the names of the panel members selected.

History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(6), (7); amd. Sec. 7, Ch. 376, L. 1983.

Cross-References

Contested case hearings — disqualification of hearing examiner, 2-4-611.

Part 5

Hearing Procedure

Part Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

27-6-501. Time and place of hearing. (1) A date, time, and place for hearing shall be fixed by the director subject to subsection (2), and prompt notice thereof shall be given to the parties involved, the attorneys, and the members of the panel. In no instance may the date set be more than 120 days after the transmittal by the director of the application for review unless the panel finds good cause exists for extending the period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the director of the panel, suitable facilities for any such hearing.

History: (1)En. 17-1310 by Sec. 10, Ch. 449, L. 1977; Sec. 17-1310, R.C.M. 1947; (2)En. 17-1305 by Sec. 5, Ch. 449, L. 1977; Sec. 17-1305, R.C.M. 1947; R.C.M. 1947, 17-1305(6), 17-1310.

Cross-References

Contested case hearings — notice, 2-4-601.

27-6-502. Conduct of hearing. (1) At the time set for hearing, the claimant submitting the case for review shall be present and shall make a brief introduction of his case, including a resume of the facts constituting the alleged professional malpractice which he is prepared to prove. The health care provider against whom the claim is brought and his attorney may be present and may make an introductory statement of his case.

(2) Both parties may call witnesses to testify before the panel, which witnesses shall be sworn. Medical texts, journals, studies, and other documen-

tary evidence relied upon by either party may be offered and admitted if relevant. Written statements of facts by treating health care providers may be reviewed.

(3) The hearing will be informal, and no official transcript may be made.

History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(1) thru (3).

Cross-References

Conduct of contested case hearings, 2-4-611, 2-4-612.

27-6-503. Conclusion of hearing — supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the claimant or his attorney consents in writing to a longer period.

(2) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present.

History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(4), (5); amd. Sec. 28, Ch. 12, L. 1979.

Part 6

Deliberations and Decision of Panel

27-6-601. Selection of chairman. At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman who shall be an attorney and who shall preside over the panel deliberations.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part).

27-6-602. Questions panel must decide. Upon consideration of all the relevant material, the panel shall decide whether there is:

(1) substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) a reasonable medical probability that the patient was injured thereby.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part).

27-6-603. Deliberations to be secret — voting. The deliberations of the panel are confidential. All votes of the panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of those voting members of the panel who sat on the entire case.

History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part).

27-6-604. Form and content of decision. The decision shall in every case be signed for the panel by the chairman and shall contain only the conclusions reached by a majority of its members and shall list the number of members, if any, dissenting therefrom. The majority may briefly explain the reasoning and the basis for their decision, and the dissenters may likewise explain the reason for disagreement.

History: **En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(3).**

27-6-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the permanent files of the panel. A copy of the decision shall be sent to the health care provider's professional licensing board.

History: **En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part); amd. Sec. 29, Ch. 12, L. 1979.**

Cross-References

Board of Medical Examiners, 2-15-1841.

27-6-606. Decision not binding — settlement agreements. The panel's decision is without administrative or judicial authority and is not binding upon any party. The panel may recommend an award, approve settlement agreements, and discuss the same, all in a manner not inconsistent with this part, and all such approved settlement agreements are binding on the parties.

History: **En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(6).**

Part 7

Effect of Proceedings in Court Action — Confidentiality

27-6-701. No court action before application to and decision by panel. No malpractice claim may be filed in any court against a health care provider before an application is made to the panel and its decision is rendered.

History: **En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(1).**

Cross-References

Administration of justice — access to courts, Art. II, sec. 16, Mont. Const.

27-6-702. Tolling of statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action which might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period in a malpractice claim does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman, or from the director upon the consent of the parties to the claim, or the panel's final decision, whichever occurs first, is entered in the permanent files of the panel and a copy is served upon the complainant or his attorney if he is represented by counsel, by certified mail.

History: **En. 17-1314 by Sec. 14, Ch. 449, L. 1977; R.C.M. 1947, 17-1314; amd. Sec. 6, Ch. 332, L. 1985.**

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Statute of Limitations — medical malpractice, 27-2-205.

"Health care provider" defined, 27-6-103.

27-6-703. Records of proceedings — confidentiality. The director shall maintain records of all proceedings before the panel, which must include the nature of the act or omissions complained of, a brief summary of the evidence expressed, the decision of the panel, and any majority or dissenting opinions filed. Any records which may identify any party to the proceedings may not be made public and are not subject to subpoena but are to be used solely for the purpose of compiling statistical data and facilitating ongoing studies of medical malpractice in Montana.

History: En. 17-1315 by Sec. 15, Ch. 449, L. 1977; R.C.M. 1947, 17-1315.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

27-6-704. Panel proceedings and decision privileged from disclosure in court actions. (1) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) The decision of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law.

History: En. 17-1311, 17-1312 by Secs. 11, 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(6), (7), 17-1312(part); amd. Sec. 30, Ch. 12, L. 1979; amd. Sec. 8, Ch. 376, L. 1983.

CHAPTER 7

SUBMISSION OF CONTROVERSY WITHOUT ACTION

Part 1 — General Provisions

27-7-101. When and in what court controversy may be submitted.
27-7-102. Action by court.
27-7-103. Entry of judgment — costs.
27-7-104. Enforcement of judgment — appeal.

Part 1

General Provisions

Part Cross-References

Trial upon agreed statement of facts, 25-7-602.

Judgment on pleading, Rule 12, M.R.Civ.P. (see Title 25, ch. 20).

Summary judgment, Rule 56, M.R.Civ.P. (see Title 25, ch. 20).

27-7-101. When and in what court controversy may be submitted. Parties to a question in difference which might be subject to a civil action may, without action, agree upon a case containing the facts upon which the controversy depends and present a submission of the same to any court which would have jurisdiction if an action had been brought, but it must appear by affidavit that the controversy is real and the proceedings in good faith to determine the rights of the parties.

History: En. Sec. 299, p. 106, Bannack Stat.; re-en. Sec. 355, p. 207, L. 1867; re-en. Sec. 429, p. 121, Cod. Stat. 1871; re-en. Sec. 455, p. 162, L. 1877; re-en. Sec. 455, 1st Div. Rev. Stat. 1879; re-en. Sec. 468, 1st Div. Comp. Stat. 1887; re-en. Sec. 2050, C. Civ. Proc. 1895; re-en. Sec. 7254, Rev. C. 1907; re-en. Sec. 9872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1138; re-en. Sec. 9872, R.C.M. 1935; R.C.M. 1947, 93-9501(part).

27-7-102. Action by court. The court must thereupon hear and determine the case and render judgment thereon as if an action were depending.

History: En. Sec. 299, p. 106, Bannack Stat.; re-en. Sec. 355, p. 207, L. 1867; re-en. Sec. 429, p. 121, Cod. Stat. 1871; re-en. Sec. 455, p. 162, L. 1877; re-en. Sec. 455, 1st Div. Rev. Stat. 1879; re-en. Sec. 468, 1st Div. Comp. Stat. 1887; re-en. Sec. 2050, C. Civ. Proc. 1895; re-en. Sec. 7254, Rev. c. 1907; re-en. Sec. 9872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1138; re-en. Sec. 9872, R.C.M. 1935; R.C.M. 1947, 93-9501(part).

Cross-References

Trial upon agreed statement of facts, 25-7-602.

Judgment, Title 25, ch. 9.

Findings by the court, Rule 52, M.R.Civ.P. (see Title 25, ch. 20).

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

27-7-103. Entry of judgment — costs. Judgment must be entered in the judgment book as in other cases but without costs for any proceeding prior to the trial.

History: En. Sec. 300, p. 106, Bannack Stat.; re-en. Sec. 356, p. 207, L. 1867; re-en. Sec. 430, p. 121, Cod. Stat. 1871; re-en. Sec. 456, p. 163, L. 1877; re-en. Sec. 456, 1st Div. Rev. Stat. 1879; re-en. Sec. 469, 1st Div. Comp. Stat. 1887; re-en. Sec. 2051, C. Civ. Proc. 1895; re-en. Sec. 7255, Rev. C. 1907; re-en. Sec. 9873, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1139; re-en. Sec. 9873, R.C.M. 1935; R.C.M. 1947, 93-9502; amd. Sec. 31, Ch. 12, L. 1979.

27-7-104. Enforcement of judgment — appeal. The judgment may be enforced in the same manner as if it had been rendered in an action and is in the same manner subject to appeal.

History: En. Sec. 301, p. 106, Bannack Stat.; re-en. Sec. 357, p. 207, L. 1867; re-en. Sec. 431, p. 121, Cod. Stat. 1871; re-en. Sec. 457, p. 163, L. 1877; re-en. Sec. 457, 1st Div. Rev. Stat. 1879; re-en. Sec. 470, 1st Div. Comp. Stat. 1887; re-en. Sec. 2052, C. Civ. Proc. 1895; re-en. Sec. 7256, Rev. C. 1907; re-en. Sec. 9874, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1140; re-en. Sec. 9874, R.C.M. 1935; R.C.M. 1947, 93-9503.

Cross-References

Trial upon agreed statement of facts, 25-7-602.

CHAPTER 8

UNIFORM DECLARATORY JUDGMENTS ACT

Part 1 — General Provisions

27-8-101. Short title.
27-8-102. Purpose — liberal construction.
27-8-103. Uniformity of interpretation.
27-8-104. Definition of person.

Part 2 — Availability of Declaratory Judgments

27-8-201. Scope of power to render declaratory judgments.
27-8-202. Who may obtain declaratory judgment.
27-8-203. When contract may be construed.
27-8-204. Declarations concerning administration of trusts and estates.
27-8-205. Enumeration not restrictive of general powers.
27-8-206. Court's discretion to refuse to render judgment.

Part 3 — Procedure

27-8-301. Necessary parties.
27-8-302. Jury trial.
27-8-303 through 27-8-310 reserved.
27-8-311. Costs.
27-8-312. Review of orders and judgments.
27-8-313. Supplemental relief.

Part 1

General Provisions

27-8-101. Short title. This chapter may be cited as the "Uniform Declaratory Judgments Act".

History: En. Sec. 16, Ch. 16, L. 1935; re-en. Sec. 9835.16, R.C.M. 1935; R.C.M. 1947, 93-8916.

27-8-102. Purpose — liberal construction. This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

History: En. Sec. 12, Ch. 16, L. 1935; re-en. Sec. 9835.12, R.C.M. 1935; R.C.M. 1947, 93-8912.

27-8-103. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

History: En. Sec. 15, Ch. 16, L. 1935; re-en. Sec. 9835.15, R.C.M. 1935; R.C.M. 1947, 93-8915.

27-8-104. Definition of person. The word "person", wherever used in this chapter, shall be construed to mean any person, partnership, joint-stock company, unincorporated association, or society or municipal or other corporation of any character whatsoever.

History: En. Sec. 13, Ch. 16, L. 1935; re-en. Sec. 9835.13, R.C.M. 1935; R.C.M. 1947, 93-8913.

Part 2

Availability of Declaratory Judgments

27-8-201. Scope of power to render declaratory judgments. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

History: En. Sec. 1, Ch. 16, L. 1935; re-en. Sec. 9835.1, R.C.M. 1935; R.C.M. 1947, 93-8901.

27-8-202. Who may obtain declaratory judgment. Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

History: En. Sec. 2, Ch. 16, L. 1935; re-en. Sec. 9835.2, R.C.M. 1935; R.C.M. 1947, 93-8902.

27-8-203. When contract may be construed. A contract may be construed either before or after there has been a breach thereof.

History: En. Sec. 3, Ch. 16, L. 1935; re-en. Sec. 9835.3, R.C.M. 1935; R.C.M. 1947, 93-8903.

27-8-204. Declarations concerning administration of trusts and estates. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, heir, or cestui que trust in the administration of a trust or of the estate of a decedent, minor, seriously mentally ill person, or insolvent may have a declaration of rights or legal relations in respect thereto:

(1) to ascertain any class of creditors, devisees, heirs, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

History: En. Sec. 4, Ch. 16, L. 1935; re-en. Sec. 9835.4, R.C.M. 1935; R.C.M. 1947, 93-8904; amd. Sec. 32, Ch. 12, L. 1979.

27-8-205. Enumeration not restrictive of general powers. The enumeration in 27-8-202 through 27-8-204 does not limit or restrict the exercise of the general powers conferred in 27-8-201 in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

History: En. Sec. 5, Ch. 16, L. 1935; re-en. Sec. 9835.5, R.C.M. 1935; R.C.M. 1947, 93-8905.

27-8-206. Court's discretion to refuse to render judgment. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

History: En. Sec. 6, Ch. 16, L. 1935; re-en. Sec. 9835.6, R.C.M. 1935; R.C.M. 1947, 93-8906.

Part 3

Procedure

27-8-301. Necessary parties. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

History: En. Sec. 11, Ch. 16, L. 1935; re-en. Sec. 9835.11, R.C.M. 1935; R.C.M. 1947, 93-8911.

27-8-302. Jury trial. When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

History: En. Sec. 9, Ch. 16, L. 1935; re-en. Sec. 9835.9, R.C.M. 1935; R.C.M. 1947, 93-8909.

27-8-303 through 27-8-310 reserved.

27-8-311. Costs. In any proceeding under this chapter the court may make such award of costs as may seem equitable and just.

History: En. Sec. 10, Ch. 16, L. 1935; re-en. Sec. 9835.10, R.C.M. 1935; R.C.M. 1947, 93-8910.

27-8-312. Review of orders and judgments. All orders, judgments, and decrees under this chapter may be reviewed as other orders, judgments, and decrees.

History: En. Sec. 7, Ch. 16, L. 1935; re-en. Sec. 9835.7, R.C.M. 1935; R.C.M. 1947, 93-8907.

27-8-313. Supplemental relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by a declaratory judgment or decree to show cause why further relief should not be granted forthwith.

History: En. Sec. 8, Ch. 16, L. 1935; re-en. Sec. 9835.8, R.C.M. 1935; R.C.M. 1947, 93-8908.

CHAPTER 9

CONFESSION OF JUDGMENT

Part 1 — General Provisions

27-9-101. When and in what courts judgment may be confessed.
27-9-102. Requirement of signed, verified statement by defendant.
27-9-103. Filing and costs — district court.
27-9-104. Filing and costs — justice's court.

Part 1

General Provisions

27-9-101. When and in what courts judgment may be confessed. Subject to 28-2-709, a judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts. Judgment upon confession may be entered up in any justice's court specified in the confession, as provided in this chapter.

History: Ap. p. Sec. 297, p. 105, Bannack Stat.; re-en. Sec. 352, p. 206, L. 1867; re-en. Sec. 426, p. 120, Cod. Stat. 1871; amd. Sec. 452, p. 162, L. 1877; re-en. Sec. 452, 1st Div. Rev. Stat. 1879; re-en. Sec. 465, 1st Div. Comp. Stat. 1887; re-en. Sec. 2040, C. Civ. Proc. 1895; re-en. Sec. 7250, Rev. C. 1907; re-en. Sec. 9868, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1132; re-en. Sec. 9868, R.C.M. 1935; Sec. 93-9401, R.C.M. 1947; Ap. p. Sec. 1620, C. Civ. Proc. 1895; re-en. Sec. 7046, Rev. C. 1907; re-en. Sec. 9679, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 889; re-en. Sec. 9679, R.C.M. 1935; Sec. 93-7301, R.C.M. 1935; R.C.M. 1947, 93-7301, 93-9401; amd. Sec. 33, Ch. 12, L. 1979.

Cross-References

Agreements for confession of judgments void, 28-2-709.

27-9-102. Requirement of signed, verified statement by defendant. A statement in writing must be made, signed by the defendant, and verified by his oath to the following effect:

(1) It must authorize the entry of judgment for a specified sum.

(2) If it be for money due or to become due, it must state concisely the facts out of which it arose and show that the sum confessed therefor is justly due or to become due.

(3) If it be for the purpose of securing the plaintiff against contingent liability, it must state concisely the facts constituting the liability and show that the sum confessed therefor does not exceed the same.

History: En. Sec. 298, p. 105, Bannack Stat.; amd. Sec. 353, p. 206, L. 1867; re-en. Sec. 427, p. 120, Cod. Stat. 1871; re-en. Sec. 453, p. 162, L. 1877; re-en. Sec. 453, 1st Div. Rev. Stat. 1879; re-en. Sec. 466, 1st Div. Comp. Stat. 1887; re-en. Sec. 2041, C. Civ. Proc. 1895; re-en. Sec. 7251, Rev. C. 1907; re-en. Sec. 9869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1133; re-en. Sec. 9869, R.C.M. 1935; R.C.M. 1947, 93-9402.

27-9-103. Filing and costs — district court. The statement must be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with $25 costs. The clerk of the district court shall deposit the fee in the district court fund. If no district court fund exists, the fee must be deposited in the general fund for district court operations.

History: En. Sec. 354, p. 206, L. 1867; re-en. Sec. 428, p. 120, Cod. Stat. 1871; re-en. Sec. 454, p. 162, L. 1877; re-en. Sec. 454, 1st Div. Rev. Stat. 1879; re-en. Sec. 467, 1st Div. Comp. Stat. 1887; amd. Sec. 2042, C. Civ. Proc. 1895; re-en. Sec. 7252, Rev. C. 1907; re-en. Sec. 9870, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1134; re-en. Sec. 9870, R.C.M. 1935; R.C.M. 1947, 93-9403; amd. Sec. 34, Ch. 12, L. 1979; amd. Sec. 2, Ch. 221, L. 1989.

27-9-104. Filing and costs — justice's court. In a justice's court which has authority to enter the judgment, the statement may be filed with the justice, who shall thereupon enter in his docket a judgment of his court for the amount confessed, with costs. If a transcript of such judgment is filed with the clerk of the district court, a copy of the statement must be filed with it.

History: En. Sec. 2043, C. Civ. Proc. 1895; re-en. Sec. 7253, Rev. C. 1907; re-en. Sec. 9871, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1135; re-en. Sec. 9871, R.C.M. 1935; R.C.M. 1947, 93-9404; amd. Sec. 35, Ch. 12, L. 1979.

CHAPTERS 10 AND 11

RESERVED

CHAPTER 12

MONTANA CHIROPRACTIC LEGAL PANEL ACT

Part 1 — General Provisions

27-12-101. Short title.
27-12-102. Purpose.
27-12-103. Definitions.
27-12-104. Creation of panel.
27-12-105. What claims panel to review.
27-12-106. Immunity of panel members and witnesses from civil liability.

Part 2 — Administration of Act

27-12-201. Appointment, term, and salary of director.
27-12-202. Employment of staff and maintenance of offices.
27-12-203. Compensation of panel members and staff.
27-12-204. Authority to adopt rules.
27-12-205. Powers of panel.
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Part 3 — Preliminary Procedure

27-12-301. How cases submitted — no court action before application.
27-12-302. Content of application — waiver of confidentiality of medical records.
27-12-303. Amendments to application.
27-12-304. Copies of application to professional societies when vicarious liability claimed.
27-12-305. Service on chiropractic physician.
27-12-306. Chiropractic physician's appearance and answer — waiver of confidentiality of records.
27-12-307. Assistance to claimant in obtaining expert consultation.
27-12-308. Director to furnish panel members with documents.

Part 4 — Formation and Composition of Panel

27-12-401. Composition of panel.
27-12-402. Selection of panelists.
27-12-403. Panel in cases involving multiple defendants.
27-12-404. Disqualification of panel member.

Part 5 — Hearing Procedure

27-12-501. Time and place of hearing.
27-12-502. Conduct of hearing.
27-12-503. Conclusion of hearing — supplemental hearing.

Part 6 — Deliberations and Decision of Panel

27-12-601. Selection of chairman.
27-12-602. Questions panel must decide.
27-12-603. Deliberations to be secret — voting.
27-12-604. Form and content of decision.
27-12-605. Decision to be filed and copies sent to parties, attorneys, and licensing board.
27-12-606. Decision not binding — settlement agreements.

Part 7 — Effect of Proceedings in Court Action—Confidentiality

27-12-701. Tolling of statute of limitations.

27-12-702. Records of proceedings — confidentiality.
27-12-703. Panel proceedings and decision privileged from disclosure in court actions.

Chapter Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Unprofessional conduct by chiropractic physician, 37-12-321.

Revocation or suspension of chiropractic physician's license, 37-12-322.

Penalty for violation of chiropractic physicians' licensing laws, 37-12-324.

Part 1

General Provisions

27-12-101. Short title. This chapter may be cited as the "Montana Chiropractic Legal Panel Act".

History: En. Sec. 1, Ch. 262, L. 1989.

27-12-102. Purpose. The purpose of this chapter is to:

(1) prevent, whenever possible, filed court actions against chiropractic physicians and their employees for professional liability in situations in which the facts do not permit at least a reasonable inference of malpractice; and

(2) make possible the fair and equitable disposition of such claims against chiropractic physicians as are or reasonably may be well founded.

History: En. Sec. 2, Ch. 262, L. 1989.

27-12-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Chiropractic physician" means:

(a) for purposes of the annual assessment under 27-12-206, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the assessment:

(i) has his principal residence or place of chiropractic practice in the state of Montana;

(ii) is not employed full time by any federal agency or entity; and

(iii) is not fully retired from the practice of chiropractic; or

(b) for all other purposes, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the occurrence of the incident giving rise to a malpractice claim:

(i) had his principal residence or place of chiropractic practice in the state of Montana and was not employed full time by any federal agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of a state to render chiropractic services and each of whose shareholders, partners, or owners were chiropractic physicians licensed to practice chiropractic under Title 37, chapter 12.

(2) "Director" means the director of the Montana chiropractic legal panel.

(3) "Malpractice claim" means any claim or potential claim against a chiropractic physician for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health

care that proximately results in damage to the claimant, and includes but is not limited to a tort or contract claim or potential claim.

(4) "Panel" means the Montana chiropractic legal panel created in 27-12-104.

History: En. Sec. 3, Ch. 262, L. 1989.

Cross-References

Montana Professional Corporation Act, Title 35, ch. 4.

Unprofessional conduct by chiropractic physician, 37-12-321.

27-12-104. Creation of panel. There is a Montana chiropractic legal panel. The panel is a state agency allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

History: En. Sec. 4, Ch. 262, L. 1989.

27-12-105. What claims panel to review. The panel shall review all malpractice claims or potential claims against chiropractic physicians covered by this chapter, except claims subject to a valid arbitration agreement allowed by law.

History: En. Sec. 5, Ch. 262, L. 1989.

Cross-References

Arbitration, Title 27, ch. 5.

27-12-106. Immunity of panel members and witnesses from civil liability. Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this chapter.

History: En. Sec. 6, Ch. 262, L. 1989.

Cross-References

Liability exposure, Title 2, ch. 9, part 1.

Part 2

Administration of Act

27-12-201. Appointment, term, and salary of director. The executive director of the Montana chiropractic association shall appoint the director of the panel, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of and the director's salary must be set by the executive director of the Montana chiropractic association, subject to the approval of the chief justice.

History: En. Sec. 7, Ch. 262, L. 1989.

27-12-202. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted.

History: En. Sec. 8, Ch. 262, L. 1989.

Cross-References

Public records, Title 2, ch. 6.

27-12-203. Compensation of panel members and staff. (1) Each member of the panel must be paid a salary of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) Each member of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503. The director shall approve such expenses before payment is made.

History: En. Sec. 9, Ch. 262, L. 1989.

27-12-204. Authority to adopt rules. The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the panel. Rules may not be adopted that require a party to make a monetary payment as a condition of bringing a malpractice claim before the chiropractic review panel.

History: En. Sec. 10, Ch. 262, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

27-12-205. Powers of panel. The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by rules adopted by the director, the issuance of subpoenas, and the performance of all other acts required to fairly and effectively administer this chapter.

History: En. Sec. 11, Ch. 262, L. 1989.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Administrative proceedings subpoenas, 2-4-611.

27-12-206. Funding. (1) There is an account in the state special revenue fund. Money from the assessments levied under this section must be deposited in the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the director to be used to administer this chapter.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year, not required for the administration of this chapter, must be retained by the director and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual assessment. The director has the same

powers and duties in connection with the collection of and failure to pay the annual assessment as the department of commerce has under 37-12-307 with a chiropractic physician's annual license fee.

History: En. Sec. 12, Ch. 262, L. 1989.

27-12-207. Panel audits. (1) The panel and fund must be audited by or at the direction of the legislative auditor and in accordance with 5-13-304 and 5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual assessment.

(2) A copy of each audit report must be furnished to the supreme court.

(3) The cost of an audit must be paid by the panel.

History: En. Sec. 13, Ch. 262, L. 1989.

Part 3

Preliminary Procedure

27-12-301. How cases submitted — no court action before application. A claimant shall submit a case for the consideration of the panel before filing a complaint in a court sitting in Montana by addressing an application in writing, signed by the claimant or his attorney, to the director of the panel.

History: En. Sec. 14, Ch. 262, L. 1989.

Cross-References

Administration of justice, Art. II, sec. 16, Mont. Const.

Due process of law, Art. II, sec. 17, Mont. Const.

27-12-302. Content of application — waiver of confidentiality of medical records. The application must contain a statement:

(1) in reasonable detail of the elements of the chiropractic physician's conduct that are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all witnesses, chiropractic and other physicians, and hospitals having contact with the claimant; and

(2) authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of the panel's consideration of the claim, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be construed as waiving any privilege for any other purpose or in any other context, in or out of court.

History: En. Sec. 15, Ch. 262, L. 1989.

27-12-303. Amendments to application. Amendments to an application may be made in the manner authorized by rule.

History: En. Sec. 16, Ch. 262, L. 1989.

Cross-References

Authority to adopt rules, 27-12-204.

27-12-304. Copies of application to professional societies when vicarious liability claimed. If an application employs a theory of respondeat superior or any other derivative theory of recovery, the director shall give a copy of the application to the state professional society, association, or licensing board of both the individual chiropractic physician whose alleged malpractice caused the application to be filed and the chiropractic physician named a defendant as employer, master, or principal.

History: En. Sec. 17, Ch. 262, L. 1989.

Cross-References

Board of Chiropractors, Title 37, ch. 12, part 2.

27-12-305. Service on chiropractic physician. Upon receipt of an application, the director or his delegate shall serve a copy of the application on the chiropractic physician whose alleged malpractice caused the application to be filed. Service must be by mailing a certified copy of the application to the chiropractic physician at his last-known address, postage prepaid, by certified mail, return receipt requested.

History: En. Sec. 18, Ch. 262, L. 1989.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

27-12-306. Chiropractic physician's appearance and answer — waiver of confidentiality of records. (1) If a chiropractic physician whose alleged malpractice caused the application to be filed chooses to retain legal counsel, his attorney must informally enter an appearance with the director.

(2) The chiropractic physician shall answer the application and submit a statement authorizing the panel to inspect all medical and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the content of those records. Nothing in the statement waives any privilege for any other purpose.

History: En. Sec. 19, Ch. 262, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Discovery in contested cases, 2-4-602.

Health care information — confidentiality, Title 50, ch. 16, part 5.

27-12-307. Assistance to claimant in obtaining expert consultation. The director shall cooperate fully with the claimant in retaining as an expert consultant a chiropractic physician qualified in the field of chiropractic.

History: En. Sec. 20, Ch. 262, L. 1989.

27-12-308. Director to furnish panel members with documents. At least 10 days prior to the hearing, the director shall give each panel member copies of all claims, briefs, medical or hospital records, and other documents the director considers necessary.

History: En. Sec. 21, Ch. 262, L. 1989.

Cross-References

Contested case hearings — documentary evidence, 2-4-612.

Part 4

Formation and Composition of Panel

27-12-401. Composition of panel. Those eligible to sit on the panel are chiropractic physicians licensed under Montana law and residing in Montana and attorneys who are members of the state bar of Montana. Three panel members who are chiropractic physicians and three panel members who are attorneys shall sit in review of each case.

History: En. Sec. 22, Ch. 262, L. 1989.

Cross-References

Licensing of chiropractic physicians, Title 37, ch. 12.

Licensing of attorneys, Title 37, ch. 61.

27-12-402. Selection of panelists. (1) The director shall promptly transmit an application submitted under 27-12-301 to the directors of the chiropractic physician's state professional society or association and the state bar of Montana. Within 14 days from the date of transmittal of the application, the director of the professional society or association and the state bar of Montana shall each select 12 proposed panelists from which the director shall select three from each list to serve on the panel. The director shall notify the parties of the names of the panelists.

(2) If no state professional society or association exists or if the chiropractic physician does not belong to such a society or association, the director shall transmit the application to the chiropractic physician's state licensing board and the licensing board shall select 12 proposed panelists from the chiropractic physician's profession and, when applicable, from persons specializing in the same field or discipline as the chiropractic physician.

History: En. Sec. 23, Ch. 262, L. 1989.

27-12-403. Panel in cases involving multiple defendants. If there are multiple defendants, the case against each may be reviewed by a separate panel or, at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all defendants.

History: En. Sec. 24, Ch. 262, L. 1989.

27-12-404. Disqualification of panel member. (1) A panel member or proposed member shall disqualify himself from consideration of a case in which, by virtue of his circumstances he believes his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a panel member or proposed member from serving.

(2) If a party files an affidavit stating that he believes a panel member cannot impartially sit in review of the application, that panel member is disqualified from consideration of the case. The affidavit must be filed within 15 days of the transmittal by the director, under 27-12-402, of the names of the panel members selected. A party may not disqualify more than three panel members. The entity that chose the disqualified member shall select another panel member.

History: En. Sec. 25, Ch. 262, L. 1989.

Cross-References

Contested case hearings — disqualification of hearing examiners and agency members, 2-4-611.

Part 5

Hearing Procedure

Part Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

27-12-501. Time and place of hearing. (1) Subject to subsection (2), the director shall choose a date, time, and place for hearing and give prompt notice thereof to the parties involved, their attorneys, and the members of the panel. The hearing date may not be more than 120 days after transmittal of the application by the director, unless the panel finds that good cause exists for extending the 120-day period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall, upon request of the director of the panel, provide suitable facilities for the hearing.

History: En. Sec. 26, Ch. 262, L. 1989.

Cross-References

Contested case hearings — notice, 2-4-601.

27-12-502. Conduct of hearing. (1) At the time set for hearing, the claimant must be present and give a brief statement of his case, including the facts constituting the alleged professional malpractice that he is prepared to prove. The chiropractic physician against whom the claim is brought and his attorney may be present and may make an introductory statement of his case.

(2) A party may call witnesses to testify before the panel. Witnesses must be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by a party may be offered and admitted if relevant. Written statements of facts by treating chiropractic physicians may be reviewed.

(3) The hearing is informal, and an official transcript must not be made.

History: En. Sec. 27, Ch. 262, L. 1989.

Cross-References

Conduct of contested case hearings, 2-4-611, 2-4-612.

27-12-503. Conclusion of hearing — supplemental hearing. (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing. The supplemental hearing must be held at a date and time no more than 30 days from the date of the original hearing, unless the claimant or his attorney consents in writing to a longer period.

(2) A supplemental hearing must be held in the same manner as the original hearing, and the parties and their attorneys may be present.

History: En. Sec. 28, Ch. 262, L. 1989.

Part 6

Deliberations and Decision of Panel

Part Cross-References

Contested case hearings — decision, 2-4-621 through 2-4-623.

27-12-601. Selection of chairman. At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman, who must be an attorney.

History: En. Sec. 29, Ch. 262, L. 1989.

27-12-602. Questions panel must decide. Upon consideration of all relevant evidence, the panel shall decide whether there is:

(1) substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) a reasonable medical probability that the patient was injured thereby.

History: En. Sec. 30, Ch. 262, L. 1989.

27-12-603. Deliberations to be secret — voting. The deliberations of the panel are confidential. Each vote of the panel on a question for discussion must be by secret ballot. The decision must be by a majority vote of those voting members of the panel who sat during the case.

History: En. Sec. 31, Ch. 262, L. 1989.

27-12-604. Form and content of decision. (1) The decision must:

(a) be in writing and signed by the chairman;

(b) contain only the conclusions reached by a majority of the panel; and

(c) list the number of dissenting members, if any.

(2) The majority may briefly explain the reasoning and the basis for its decision, and the dissenters may likewise explain the reasons for disagreement.

History: En. Sec. 32, Ch. 262, L. 1989.

27-12-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. A copy of the decision must be:

(1) given to the parties and their attorneys;

(2) retained in the permanent files of the panel; and

(3) given to the chiropractic physician's professional licensing board.

History: En. Sec. 33, Ch. 262, L. 1989.

27-12-606. Decision not binding — settlement agreements. The panel's decision is without administrative or judicial authority and is not binding upon a party. The panel may recommend an award or approve a settlement agreement. An approved settlement agreement is binding on the parties.

History: **En. Sec. 34, Ch. 262, L. 1989.**

Part 7

Effect of Proceedings in Court Action — Confidentiality

27-12-701. Tolling of statute of limitations. (1) Upon receipt of an application by the director, the running of an applicable limitation period in a malpractice claim is tolled as to each chiropractic physician named as a party and as to each other person or entity named as a necessary or proper party for a court action that might subsequently arise out of the factual circumstances set forth in the application.

(2) The running of the applicable limitation period in a malpractice claim does not begin again until:

(a) 30 days after an order of dismissal, with or without prejudice against refiling, is issued; or

(b) after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant or his attorney.

History: **En. Sec. 35, Ch. 262, L. 1989.**

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Statute of limitations — medical malpractice, 27-2-205.

27-12-702. Records of proceedings — confidentiality. The director shall maintain records of all proceedings before the panel. The record must include the nature of the act or omission complained of, a brief summary of the evidence, the decision of the panel, and any majority or dissenting opinions filed. Records that identify a party to the proceedings may not be made public, are not subject to subpoena, and may be used only to compile statistical data and facilitate studies of medical malpractice in Montana.

History: **En. Sec. 36, Ch. 262, L. 1989.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

27-12-703. Panel proceedings and decision privileged from disclosure in court actions. (1) A panel member must not be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) A decision of the panel is not admissible as evidence in an action subsequently brought in a court of law.

History: **En. Sec. 37, Ch. 262, L. 1989.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

CHAPTERS 13 AND 14

RESERVED

CHAPTER 15

PROVISIONAL REMEDIES

Part 1 — General Provisions

27-15-101. When plaintiff may be required to elect among arrest, injunction, and attachment.
27-15-102. Availability of provisional remedies to defendant interposing counterclaim.
27-15-103. Time limit on decisions regarding arrest, injunction, or attachment.

Part 1

General Provisions

27-15-101. When plaintiff may be required to elect among arrest, injunction, and attachment. Where an application for an order of arrest, injunction order, and writ of attachment or two of them is made in the same action against the same defendant and it satisfactorily appears that, under the particular circumstances of the case, two or all of them are not necessary for the plaintiff's security, the court or judge may, in its or his discretion, require the plaintiff to elect between them.

History: En. Sec. 980, C. Civ. Proc. 1895; re-en. Sec. 6708, Rev. C. 1907; re-en. Sec. 9311, R.C.M. 1921; re-en. Sec. 9311, R.C.M. 1935; R.C.M. 1947, 93-4601(part).

27-15-102. Availability of provisional remedies to defendant interposing counterclaim. Whenever the defendant interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, his right to a provisional remedy is the same as it would be in an action brought by him against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment. For the purpose of applying to such a case the provisions of chapters 15 through 20 of this title and chapter 8 of Title 25, the defendant is considered the plaintiff, the plaintiff is considered the defendant, and the counterclaim so set forth in the answer is considered the complaint.

History: En. Sec. 981, C. Civ. Proc. 1895; re-en. Sec. 6709, Rev. C. 1907; re-en. Sec. 9312, R.C.M. 1921; re-en. Sec. 9312, R.C.M. 1935; R.C.M. 1947, 93-4602; amd. Sec. 36, Ch. 12, L. 1979.

27-15-103. Time limit on decisions regarding arrest, injunction, or attachment. Where an application is made to obtain, vacate, modify, or set aside an order of arrest, injunction order, or writ of attachment, the court or judge must finally decide the same within 20 days after it is submitted for decision.

History: En. Sec. 980, C. Civ. Proc. 1895; re-en. Sec. 6708, Rev. C. 1907; re-en. Sec. 9311, R.C.M. 1921; re-en. Sec. 9311, R.C.M. 1935; R.C.M. 1947, 93-4601(part).

CHAPTER 16

ARREST AND BAIL IN CIVIL ACTIONS

Part 1 — General Provisions

27-16-101. Exclusive procedure for prejudgment arrest in civil action.
27-16-102. When defendant may be arrested.

Part 2 — Order for Arrest—Execution

27-16-201. Order from judge required.
27-16-202. Time for making order.
27-16-203. When order must be made.
27-16-204. Plaintiff's undertaking.
27-16-205. Affidavits of sureties — filing of undertaking.
27-16-206. Directions to sheriff in order.
27-16-207. Service of order and affidavit.
27-16-208. Execution of order — prepayment of expense by plaintiff.
27-16-209. Liability of sheriff for escape or rescue.
27-16-210. Recovery on sheriff's official bond.

Part 3 — Vacation of Order—Reduction of Bail

27-16-301. Proceedings to vacate order or reduce bail.
27-16-302. When order vacated or bail reduced.

Part 4 — Giving Bail

27-16-401. Discharge of defendant upon giving bail before execution.
27-16-402. Form of undertaking for bail.
27-16-403. Qualifications of sureties.
27-16-404. Filing of order with return and undertaking — plaintiff's notice of nonacceptance.
27-16-405. Notice of justification of sureties — new undertaking.
27-16-406. Procedure for justification.
27-16-407. Acceptance of sufficiency of sureties by judge or clerk.

Part 5 — Liability and Exoneration of Sureties

27-16-501. Surrender of defendant.
27-16-502. Manner and time of surrender.
27-16-503. Exoneration of sureties.
27-16-504. Action to enforce sureties' liability.
27-16-505. Other circumstances in which sureties exonerated.

Part 6 — Deposit of Money in Lieu of Bail

27-16-601. Deposit of money by defendant with sheriff.
27-16-602. Sheriff to pay money into court — certificates of payment.
27-16-603. Substituting bail for deposit.

27-16-604. Disposition of deposited money after judgment.

Parts 7 through 9 reserved

Part 10 — Arrest in Civil Actions in Justice's Court

27-16-1001. Justice's authority to order arrest.
27-16-1002. Plaintiff's affidavit and undertaking.
27-16-1003. Defendant to be taken before justice immediately.
27-16-1004. Notice to plaintiff of arrest — officer's certificate.
27-16-1005. Officer to detain defendant — expenses.
27-16-1006. Defense against order of arrest.

Chapter Cross-References

Bail — criminal, Title 46, ch. 9.

Part 1

General Provisions

27-16-101. Exclusive procedure for prejudgment arrest in civil action. No person may be arrested before judgment in a civil action except as prescribed by this chapter.

History: En. Sec. 72, p. 148, L. 1867; re-en. Sec. 80, p. 44, Cod. Stat. 1871; re-en. Sec. 118, p. 68, L. 1877; re-en. Sec. 118, 1st Div. Rev. Stat. 1879; re-en. Sec. 120, 1st Div. Comp. Stat. 1887; re-en. Sec. 800, C. Civ. Proc. 1895; re-en. Sec. 6595, Rev. C. 1907; re-en. Sec. 9193, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 478; re-en. Sec. 9193, R.C.M. 1935; R.C.M. 1947, 93-4001; amd. Sec. 37, Ch. 12, L. 1979.

27-16-102. When defendant may be arrested. The defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud his creditors;

(2) in an action for willful injury to person or character or to property which the defendant knew belonged to another;

(3) in an action for a fine or penalty or for money or property fraudulently misapplied or converted to his own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; for misconduct or neglect in office or in a professional employment; or for a willful violation of duty;

(4) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

(6) when the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors.

History: En. Sec. 73, p. 148, L. 1867; re-en. Sec. 81, p. 44, Cod. Stat. 1871; re-en. Sec. 119, p. 68, L. 1877; re-en. Sec. 119, 1st Div. Rev. Stat. 1879; re-en. Sec. 121, 1st Div. Comp. Stat. 1887; re-en. Sec. 801, C. Civ. Proc. 1895; re-en. Sec. 6596, Rev. C. 1907; re-en. Sec. 9194, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 479; re-en. Sec. 9194, R.C.M. 1935; amd. Sec. 69, Ch. 359, L. 1977; R.C.M. 1947, 93-4002; amd. Sec. 38, Ch. 12, L. 1979.

Cross-References

Standards of conduct for public officials, Title 2, ch. 2.

Libel and slander, Title 27, ch. 1, part 8.

Contracts — interpretation, Title 28, ch. 2 and 3.

Actual and constructive fraud, 28-2-404 through 28-2-406.

Fraudulent conveyances, Title 31, ch. 2, part 3.

Fellow employee — liability for malicious act or omission, 39-71-413.

Part 2

Order for Arrest — Execution

Part Cross-References

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

27-16-201. Order from judge required. An order for the arrest of the defendant must be obtained from the judge of the court in which the action is brought.

History: En. Sec. 74, p. 148, L. 1867; re-en. Sec. 82, p. 44, Cod. Stat. 1871; re-en. Sec. 120, p. 68, L. 1877; re-en. Sec. 120, 1st Div. Rev. Stat. 1879; re-en. Sec. 122, 1st Div. Comp. Stat. 1887; re-en. Sec. 802, C. Civ. Proc. 1895; re-en. Sec. 6597, Rev. C. 1907; re-en. Sec. 9195, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 480; re-en. Sec. 9195, R.C.M. 1935; R.C.M. 1947, 93-4003.

27-16-202. Time for making order. The order may be made at the time of issuing the summons or at any time afterwards before judgment.

History: En. Sec. 77, p. 148, L. 1867; re-en. Sec. 85, p. 44, Cod. Stat. 1871; re-en. Sec. 123, p. 69, L. 1877; re-en. Sec. 123, 1st Div. Rev. Stat. 1879; re-en. Sec. 125, 1st Div. Comp. Stat. 1887; re-en. Sec. 805, C. Civ. Proc. 1895; re-en. Sec. 6600, Rev. C. 1907; re-en. Sec. 9198, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 483; re-en. Sec. 9198, R.C.M. 1935; R.C.M. 1947, 93-4006(part).

27-16-203. When order must be made. The order must be made whenever it shall appear to the judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists and that the case is one of those mentioned in 27-16-102.

History: En. Secs. 75, 76, p. 148, L. 1867; re-en. Sec. 83, p. 44, Cod. Stat. 1871; re-en. Sec. 121, p. 69, L. 1877; re-en. Sec. 121, 1st Div. Rev. Stat. 1879; re-en. Sec. 123, 1st Div. Comp. Stat. 1887; amd. Sec. 803, C. Civ. Proc. 1895; re-en. Sec. 6598, Rev. C. 1907; re-en. Sec. 9196, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 481, 482; re-en. Sec. 9196, R.C.M. 1935; R.C.M. 1947, 93-4004(part).

27-16-204. Plaintiff's undertaking. Before making the order, the judge must require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that, if the defendant recover judgment or if the court shall finally decide that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may be awarded to the defendant and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking, which shall be at least $500.

History: En. Secs. 75, 76, p. 148, L. 1867; re-en. Sec. 83, p. 44, Cod. Stat. 1871; re-en. Sec. 121, p. 69, L. 1877; re-en. Sec. 121, 1st Div. Rev. Stat. 1879; re-en. Sec. 123, 1st Div. Comp. Stat. 1887; amd. Sec. 803, C. Civ. Proc. 1895; re-en. Sec. 6598, Rev. C. 1907; re-en. Sec. 9196, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 481, 482; re-en. Sec. 9196, R.C.M. 1935; R.C.M. 1947, 93-4004(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-16-205. Affidavits of sureties — filing of undertaking. Each of the sureties must annex to the undertaking an affidavit that he is a resident and householder or freeholder within the state and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking must be filed with the clerk of the court.

History: En. Sec. 76, p. 148, L. 1867; re-en. Sec. 84, p. 44, Cod. Stat. 1871; re-en. Sec. 122, p. 69, L. 1877; re-en. Sec. 122, 1st Div. Rev. Stat. 1879; re-en. Sec. 124, 1st Div. Comp. Stat. 1887; re-en. Sec. 804, C. Civ. Proc. 1895; re-en. Sec. 6599, Rev. C. 1907; re-en. Sec. 9197, R.C.M. 1921; re-en. Sec. 9197, R.C.M. 1935; R.C.M. 1947, 93-4005.

27-16-206. Directions to sheriff in order. The order must require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

History: En. Sec. 77, p. 148, L. 1867; re-en. Sec. 85, p. 44, Cod. Stat. 1871; re-en. Sec. 123, p. 69, L. 1877; re-en. Sec. 123, 1st Div. Rev. Stat. 1879; re-en. Sec. 125, 1st Div. Comp. Stat. 1887; re-en. Sec. 805, C. Civ. Proc. 1895; re-en. Sec. 6600, Rev. C. 1907; re-en. Sec. 9198, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 483; re-en. Sec. 9198, R.C.M. 1935; R.C.M. 1947, 93-4006(part).

27-16-207. Service of order and affidavit. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the sheriff, who, upon arresting the defendant, shall deliver him a copy of the affidavit and also, if defendant desires, a copy of the order of arrest.

History: En. Sec. 78, p. 149, L. 1867; re-en. Sec. 86, p. 45, Cod. Stat. 1871; re-en. Sec. 124, p. 69, L. 1877; re-en. Sec. 124, 1st Div. Rev. Stat. 1879; re-en. Sec. 126, 1st Div. Comp. Stat. 1887; re-en. Sec. 806, C. Civ. Proc. 1895; re-en. Sec. 6601, Rev. C. 1907; re-en. Sec. 9199, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 484; re-en. Sec. 9199, R.C.M. 1935; R.C.M. 1947, 93-4007.

27-16-208. Execution of order — prepayment of expense by plaintiff. The sheriff must execute the order by arresting the defendant and keeping him in custody until discharged by law. But the sheriff is not bound to keep such person under arrest more than 24 hours unless the plaintiff advance each day the expense of keeping such person, which expense shall be taxed as costs in the action and in no case shall be a charge against the county.

History: En. Sec. 79, p. 149, L. 1867; en. Sec. 87, p. 45, Cod. Stat. 1871; re-en. Sec. 125, p. 69, L. 1877; re-en. Sec. 125, 1st Div. Rev. Stat. 1879; re-en. Sec. 127, 1st Div. Comp. Stat. 1887; re-en. Sec. 807, C. Civ. Proc. 1895; re-en. Sec. 6602, Rev. C. 1907; re-en. Sec. 9200, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 485; re-en. Sec. 9200, R.C.M. 1935; R.C.M. 1947, 93-4008.

27-16-209. Liability of sheriff for escape or rescue. If after being arrested the defendant escape or be rescued, the sheriff is liable as bail, but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

History: **En. Sec. 95, p. 151, L. 1867; re-en. Sec. 103, p. 48, Cod. Stat. 1871; re-en. Sec. 141, p. 73, L. 1877; re-en. Sec. 141, 1st Div. Rev. Stat. 1879; re-en. Sec. 143, 1st Div. Comp. Stat. 1887; re-en. Sec. 823, C. Civ. Proc. 1895; re-en. Sec. 6618, Rev. C. 1907; re-en. Sec. 9216, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 501; re-en. Sec. 9216, R.C.M. 1935; R.C.M. 1947, 93-4024.**

Cross-References

Liability for escape in civil actions, 7-32-2250.

27-16-210. Recovery on sheriff's official bond. If a judgment be recovered against the sheriff upon his liability as bail and an execution thereon be returned unsatisfied in whole or in part, the same proceeding may be had on his official bond for the recovery of the whole or any deficiency as in other cases of delinquency.

History: **En. Sec. 96, p. 151, L. 1867; re-en. Sec. 104, p. 48, Cod. Stat. 1871; re-en. Sec. 142, p. 73, L. 1877; re-en. Sec. 142, 1st Div. Rev. Stat. 1879; re-en. Sec. 144, 1st Div. Comp. Stat. 1887; re-en. Sec. 824, C. Civ. Proc. 1895; re-en. Sec. 6619, Rev. C. 1907; re-en. Sec. 9217, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 502; re-en. Sec. 9217, R.C.M. 1935; R.C.M. 1947, 93-4025.**

Part 3

Vacation of Order — Reduction of Bail

27-16-301. Proceedings to vacate order or reduce bail. A defendant arrested may, at any time before justification of bail, apply to the judge who made the order or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

History: **En. Sec. 97, p. 151, L. 1867; re-en. Sec. 105, p. 48, Cod. Stat. 1871; re-en. Sec. 143, p. 73, L. 1877; re-en. Sec. 143, 1st Div. Rev. Stat. 1879; re-en. Sec. 145, 1st Div. Comp. Stat. 1887; re-en. Sec. 825, C. Civ. Proc. 1895; re-en. Sec. 6620, Rev. C. 1907; re-en. Sec. 9218, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 503; re-en. Sec. 9218, R.C.M. 1935; R.C.M. 1947, 93-4026.**

27-16-302. When order vacated or bail reduced. If, upon such application, it satisfactorily appears that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appears that the bail was fixed too high, the amount shall be reduced.

History: **En. Sec. 98, p. 151, L. 1867; re-en. Sec. 106, p. 48, Cod. Stat. 1871; re-en. Sec. 144, p. 73, L. 1877; re-en. Sec. 144, 1st Div. Rev. Stat. 1879; re-en. Sec. 146, 1st Div. Comp. Stat. 1887; re-en. Sec. 826, C. Civ. Proc. 1895; re-en. Sec. 6621, Rev. C. 1907; re-en. Sec. 9219, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 504; re-en. Sec. 9219, R.C.M. 1935; R.C.M. 1947, 93-4027.**

Part 4

Giving Bail

27-16-401. Discharge of defendant upon giving bail before execution. The defendant, at any time before execution, is discharged from arrest either upon giving bail or upon depositing the amount mentioned in the order, as provided in this chapter.

History: En. Sec. 80, p. 149, L. 1867; re-en. Sec. 88, p. 45, Cod. Stat. 1871; re-en. Sec. 126, p. 70, L. 1877; re-en. Sec. 126, 1st Div. Rev. Stat. 1879; re-en. Sec. 128, 1st Div. Comp. Stat. 1887; re-en. Sec. 808, C. Civ. Proc. 1895; re-en. Sec. 6603, Rev. C. 1907; re-en. Sec. 9201, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 486; re-en. Sec. 9201, R.C.M. 1935; R.C.M. 1947, 93-4009.

27-16-402. Form of undertaking for bail. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the judgment therein or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

History: En. Sec. 81, p. 149, L. 1867; re-en. Sec. 89, p. 45, Cod. Stat. 1871; re-en. Sec. 127, p. 70, L. 1877; re-en. Sec. 127, 1st Div. Rev. Stat. 1879; re-en. Sec. 129, 1st Div. Comp. Stat. 1887; re-en. Sec. 809, C. Civ. Proc. 1895; re-en. Sec. 6604, Rev. C. 1907; re-en. Sec. 9202, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 487; re-en. Sec. 9202, R.C.M. 1935; R.C.M. 1947, 93-4010.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-16-403. Qualifications of sureties. The qualifications of bail shall be as follows:

(1) Each of them must be a resident and householder or freeholder within the county.

(2) Each must be worth the amount specified in the order of arrest or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

History: En. Sec. 88, p. 150, L. 1867; re-en. Sec. 96, p. 46, Cod. Stat. 1871; re-en. Sec. 134, p. 71, L. 1877; re-en. Sec. 134, 1st Div. Rev. Stat. 1879; re-en. Sec. 136, 1st Div. Comp. Stat. 1887; re-en. Sec. 816, C. Civ. Proc. 1895; re-en. Sec. 6611, Rev. C. 1907; re-en. Sec. 9209, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 494; re-en. Sec. 9209, R.C.M. 1935; R.C.M. 1947, 93-4017.

27-16-404. Filing of order with return and undertaking — plaintiff's notice of nonacceptance. (1) Within the time limited for that purpose, the sheriff must file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided.

(2) The plaintiff, within 10 days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them and the sheriff shall be exonerated from liability. If no notice be served within 10 days, the original undertaking must be filed with the clerk of the court.

History: En. Sec. 86, p. 150, L. 1867; re-en. Sec. 94, p. 46, Cod. Stat. 1871; re-en. Sec. 132, p. 71, L. 1877; re-en. Sec. 132, 1st Div. Rev. Stat. 1879; re-en. Sec. 134, 1st Div. Comp. Stat. 1887; re-en. Sec. 814, C. Civ. Proc. 1895; re-en. Sec. 6609, Rev. C. 1907; re-en. Sec. 9207, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 492; re-en. Sec. 9207, R.C.M. 1935; R.C.M. 1947, 93-4015.

27-16-405. Notice of justification of sureties — new undertaking. Within 5 days after receipt of notice, the sheriff or defendant may give to the plaintiff or his attorney notice of the justification of the same or other bail (specifying the place of residence and occupation of the latter) before a judge of the court or clerk thereof, at a specified time and place, the time not to be less than 5 or more than 10 days thereafter, except by consent of parties. In case other bail is given, there shall be a new undertaking.

History: En. Sec. 87, p. 150, L. 1867; re-en. Sec. 95, p. 46, Cod. Stat. 1871; re-en. Sec. 133, p. 71, L. 1877; re-en. Sec. 133, 1st Div. Rev. Stat. 1879; re-en. Sec. 135, 1st Div. Comp. Stat. 1887; re-en. Sec. 815, C. Civ. Proc. 1895; re-en. Sec. 6610, Rev. C. 1907; re-en. Sec. 9208, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 493; re-en. Sec. 9208, R.C.M. 1935; R.C.M. 1947, 93-4016.

27-16-406. Procedure for justification. For the purpose of justification, each of the bail must attend before the judge or clerk at the time and place mentioned in the notice and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the bail if required by the plaintiff.

History: En. Sec. 89, p. 150, L. 1867; re-en. Sec. 97, p. 47, Cod. Stat. 1871; re-en. Sec. 135, p. 72, L. 1877; re-en. Sec. 135, 1st Div. Rev. Stat. 1879; re-en. Sec. 137, 1st Div. Comp. Stat. 1887; re-en. Sec. 817, C. Civ. Proc. 1895; re-en. Sec. 6612, Rev. C. 1907; re-en. Sec. 9210, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 495; re-en. Sec. 9210, R.C.M. 1935; R.C.M. 1947, 93-4018.

27-16-407. Acceptance of sufficiency of sureties by judge or clerk. If the judge or clerk shall find the bail sufficient, he must annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

History: En. Sec. 90, p. 150, L. 1867; re-en. Sec. 98, p. 47, Cod. Stat. 1871; re-en. Sec. 136, p. 72, L. 1877; re-en. Sec. 136, 1st Div. Rev. Stat. 1879; re-en. Sec. 138, 1st Div. Comp. Stat. 1887; re-en. Sec. 818, C. Civ. Proc. 1895; re-en. Sec. 6613, Rev. C. 1907; re-en. Sec. 9211, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 496; re-en. Sec. 9211, R.C.M. 1935; R.C.M. 1947, 93-4019.

Part 5

Liability and Exoneration of Sureties

Part Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-16-501. Surrender of defendant. At any time before judgment or within 10 days thereafter, the bail may surrender the defendant in their exoneration or he may surrender himself to the sheriff of the county where he was arrested.

History: En. Sec. 82, p. 149, L. 1867; re-en. Sec. 90, p. 45, Cod. Stat. 1871; re-en. Sec. 128, p. 70, L. 1877; re-en. Sec. 128, 1st Div. Rev. Stat. 1879; re-en. Sec. 130, 1st Div. Comp. Stat. 1887; re-en. Sec. 810, C. Civ. Proc. 1895; re-en. Sec. 6605, Rev. C. 1907; re-en. Sec. 9203, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 488; re-en. Sec. 9203, R.C.M. 1935; R.C.M. 1947, 93-4011.

27-16-502. Manner and time of surrender. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him or, by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to do so.

History: En. Sec. 83, p. 149, L. 1867; re-en. Sec. 91, p. 45, Cod. Stat. 1871; re-en. Sec. 129, p. 70, L. 1877; re-en. Sec. 129, 1st Div. Rev. Stat. 1879; re-en. Sec. 131, 1st Div. Comp. Stat. 1887; re-en. Sec. 811, C. Civ. Proc. 1895; re-en. Sec. 6606, Rev. C. 1907; re-en. Sec. 9204, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 489; re-en. Sec. 9204, R.C.M. 1935; R.C.M. 1947, 93-4012(part).

27-16-503. Exoneration of sureties. Upon arrest of the defendant by the sheriff or upon his delivery to the sheriff by the bail or upon his own surrender, the bail shall be exonerated, provided such arrest, delivery, or surrender take place before the expiration of 10 days after judgment; but if such arrest, delivery, or surrender be not made within 10 days after the judgment, the bail shall be finally charged on their undertaking and be bound to pay the amount of the judgment within 10 days thereafter.

History: En. Sec. 83, p. 149, L. 1867; re-en. Sec. 91, p. 45, Cod. Stat. 1871; re-en. Sec. 129, p. 70, L. 1877; re-en. Sec. 129, 1st Div. Rev. Stat. 1879; re-en. Sec. 131, 1st Div. Comp. Stat. 1887; re-en. Sec. 811, C. Civ. Proc. 1895; re-en. Sec. 6606, Rev. C. 1907; re-en. Sec. 9204, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 489; re-en. Sec. 9204, R.C.M. 1935; R.C.M. 1947, 93-4012(part).

27-16-504. Action to enforce sureties' liability. If the bail neglect or refuse to pay the judgment within 10 days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

History: En. Sec. 84, p. 149, L. 1867; re-en. Sec. 92, p. 45, Cod. Stat. 1871; re-en. Sec. 130, p. 70, L. 1877; re-en. Sec. 130, 1st Div. Rev. Stat. 1879; re-en. Sec. 132, 1st Div. Comp. Stat. 1887; re-en. Sec. 812, C. Civ. Proc. 1895; re-en. Sec. 6607, Rev. C. 1907; re-en. Sec. 9205, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 490; re-en. Sec. 9205, R.C.M. 1935; R.C.M. 1947, 93-4013.

27-16-505. Other circumstances in which sureties exonerated. The bail must also be exonerated by the death of the defendant, his imprisonment in the state penitentiary or prison, or his legal discharge from the obligation to render himself amenable to the process.

History: En. Sec. 85, p. 149, L. 1867; re-en. Sec. 93, p. 46, Cod. Stat. 1871; re-en. Sec. 131, p. 71, L. 1877; re-en. Sec. 131, 1st Div. Rev. Stat. 1879; re-en. Sec. 133, 1st Div. Comp. Stat. 1887; re-en. Sec. 813, C. Civ. Proc. 1895; re-en. Sec. 6608, Rev. C. 1907; re-en. Sec. 9206, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 491; re-en. Sec. 9206, R.C.M. 1935; R.C.M. 1947, 93-4014.

Part 6

Deposit of Money in Lieu of Bail

27-16-601. Deposit of money by defendant with sheriff. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged from custody.

History: En. Sec. 91, p. 150, L. 1867; re-en. Sec. 99, p. 47, Cod. Stat. 1871; re-en. Sec. 137, p. 72, L. 1877; re-en. Sec. 137, 1st Div. Rev. Stat. 1879; re-en. Sec. 139, 1st Div. Comp. Stat. 1887; re-en. Sec. 819, C. Civ. Proc. 1895; re-en. Sec. 6614, Rev. C. 1907; re-en. Sec. 9212, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 497; re-en. Sec. 9212, R.C.M. 1935; R.C.M. 1947, 93-4020.

27-16-602. Sheriff to pay money into court — certificates of payment. The sheriff must, immediately after the deposit, pay the same into court and take from the clerk receiving the same two certificates of such payment, one of which he must deliver or transmit to the plaintiff or his attorney and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

History: En. Sec. 92, p. 151, L. 1867; re-en. Sec. 100, p. 47, Cod. Stat. 1871; re-en. Sec. 138, p. 72, L. 1877; re-en. Sec. 138, 1st Div. Rev. Stat. 1879; re-en. Sec. 140, 1st Div. Comp. Stat. 1887; re-en. Sec. 820, C. Civ. Proc. 1895; re-en. Sec. 6615, Rev. C. 1907; re-en. Sec. 9213, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 498; re-en. Sec. 9213, R.C.M. 1935; R.C.M. 1947, 93-4021.

27-16-603. Substituting bail for deposit. If money be deposited, as provided in 27-16-601 and 27-16-602, bail may be given and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

History: En. Sec. 93, p. 151, L. 1867; re-en. Sec. 101, p. 47, Cod. Stat. 1871; re-en. Sec. 139, p. 72, L. 1877; re-en. Sec. 139, 1st Div. Rev. Stat. 1879; re-en. Sec. 141, 1st Div. Comp. Stat. 1887; re-en. Sec. 821, C. Civ. Proc. 1895; re-en. Sec. 6616, Rev. C. 1907; re-en. Sec. 9214, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 499; re-en. Sec. 9214, R.C.M 1935; R.C.M. 1947, 93-4022.

27-16-604. Disposition of deposited money after judgment. Where money shall have been deposited, if it remains on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk must, under direction of the court, apply the same in satisfaction thereof and, after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk must, under the direction of the court, refund him the whole sum deposited and remaining unapplied.

History: En. Sec. 94, p. 151, L. 1867; re-en. Sec. 102, p. 48, Cod. Stat. 1871; re-en. Sec. 140, p. 73, L. 1877; re-en. Sec. 140, 1st Div. Rev. Stat. 1879; re-en. Sec. 142, 1st Div. Comp. Stat. 1887; re-en. Sec. 822, C. Civ. Proc. 1895; re-en. Sec. 6617, Rev. C. 1907; re-en. Sec. 9215, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 500; re-en. Sec. 9215, R.C.M. 1935; R.C.M. 1947, 93-4023.

Parts 7 through 9 reserved

Part 10

Arrest in Civil Actions in Justice's Court

27-16-1001. Justice's authority to order arrest. An order to arrest the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons and brought before the justice and there detained until duly discharged, in the cases mentioned in 27-16-102.

History: En. Sec. 560, p. 153, Bannack Stat.; re-en. Sec. 666, p. 170, Cod. Stat. 1871; re-en. Sec. 726, 1st Div. Rev. Stat. 1879; re-en. Sec. 746, 1st Div. Comp. Stat. 1887; amd. Sec. 1540, C. Civ. Proc. 1895; re-en. Sec. 7019, Rev. C. 1907; re-en. Sec. 9652, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 861; re-en. Sec. 9652, R.C.M. 1935; R.C.M. 1947, 93-6901.

27-16-1002. Plaintiff's affidavit and undertaking. Before an order of arrest can be made, the party applying must prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts upon which the application is founded. The plaintiff must also execute and deliver to the justice a written undertaking in the sum of $300, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking.

History: En. Sec. 561, p. 154, Bannack Stat.; re-en. Sec. 667, p. 170, Cod. Stat. 1871; re-en. Sec. 727, 1st Div. Rev. Stat. 1879; re-en. Sec. 747, 1st Div. Comp. Stat. 1887; amd. Sec. 1541, C. Civ. Proc. 1895; re-en. Sec. 7020, Rev. C. 1907; re-en. Sec. 9653, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 862; re-en. Sec. 9653, R.C.M. 1935; R.C.M. 1947, 93-6902.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-16-1003. Defendant to be taken before justice immediately. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order; and if he is absent or unable to try the action or if it appears to him by the affidavit of defendant that he is a material witness in the action, the officer must immediately take the defendant before another justice of the county, if there is another, and if not, then before a justice of an adjoining county, who must take jurisdiction of the action and proceed thereon as if the summons had been issued and the order of arrest made by him.

History: En. Sec. 562, p. 154, Bannack Stat.; re-en. Sec. 668, p. 171, Cod. Stat. 1871; re-en. Sec. 728, 1st Div. Rev. Stat. 1879; re-en. Sec. 748, 1st Div. Comp. Stat. 1887; amd. Sec. 1542, C. Civ. Proc. 1895; re-en. Sec. 7021, Rev. C. 1907; re-en. Sec. 9654, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 863; re-en. Sec. 9654, R.C.M. 1935; amd. Sec. 18, Ch. 491, L. 1973; R.C.M. 1947, 93-6903.

27-16-1004. Notice to plaintiff of arrest — officer's certificate. The officer making the arrest must immediately give notice thereof to the plaintiff or his attorney or agent and endorse on the summons and subscribe a certificate, stating the time of serving the same and the time of arrest and of his giving notice to the plaintiff.

History: En. Sec. 563, p. 154, Bannack Stat.; re-en. Sec. 669, p. 171, Cod. Stat. 1871; re-en. Sec. 729, 1st Div. Rev. Stat. 1879; re-en. Sec. 749, 1st Div. Comp. Stat. 1887; re-en. Sec. 1543, C. Civ. Proc. 1895; re-en. Sec. 7022, Rev. C. 1907; re-en. Sec. 9655, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 864; re-en. Sec. 9655, R.C.M. 1935; R.C.M. 1947, 93-6904.

27-16-1005. Officer to detain defendant — expenses. The officer making the arrest must keep the defendant in custody until he is discharged by order of the justice. The officer shall not be bound to keep such person under arrest more than 24 hours unless the plaintiff advance each day the expenses of keeping such person, which expense shall be taxed as costs in the action and in no case shall be a charge against the county.

History: En. Sec. 564, p. 154, Bannack Stat.; re-en. Sec. 670, p. 171, Cod. Stat. 1871; re-en. Sec. 730, 1st Div. Rev. Stat. 1879; re-en. Sec. 750, 1st Div. Comp. Stat. 1887; re-en. Sec. 1544, C. Civ. Proc. 1895; re-en. Sec. 7023, Rev. C. 1907; re-en. Sec. 9656, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 865; re-en. Sec. 9656, R.C.M. 1935; R.C.M. 1947, 93-6905.

27-16-1006. Defense against order of arrest. The defendant may file an answer, under oath, putting in issue the facts stated in the affidavit for the order of arrest, which may be tried by the court unless a jury is demanded; and the plaintiff shall be held to establish such facts, and if he fail to do so, the order of arrest shall be dismissed and the defendant may proceed upon the undertaking of the plaintiff for his damages occasioned by the arrest. The defendant may apply to the court to be discharged from arrest upon the ground of the insufficiency of the papers on which the order of arrest was granted.

History: En. Sec. 567, p. 155, Bannack Stat.; re-en. Sec. 673, p. 171, Cod. Stat. 1871; re-en. Sec. 733, 1st Div. Rev. Stat. 1879; re-en. Sec. 753, 1st Div. Comp. Stat. 1887; re-en. Sec. 1545, C. Civ. Proc. 1895; re-en. Sec. 7024, Rev. C. 1907; re-en. Sec. 9657, R.C.M. 1921; re-en. Sec. 9657, R.C.M. 1935; R.C.M. 1947, 93-6906.

CHAPTER 17

CLAIM AND DELIVERY OF PERSONAL PROPERTY

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Part 1

General Provisions

27-17-101. When plaintiff may claim delivery. The plaintiff in an action to recover possession of personal property may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of such property to him, as provided in this chapter.

History: En. Sec. 71, p. 56, Bannack Stat.; re-en. Sec. 99, p. 151, L. 1867; re-en. Sec. 116, p. 49, Cod. Stat. 1871; re-en. Sec. 154, p. 75, L. 1877; re-en. Sec. 154, 1st Div. Rev. Stat. 1879; re-en. Sec. 156, 1st Div. Comp. Stat. 1887; re-en. Sec. 840, C. Civ. Proc. 1895; re-en. Sec. 6622, Rev. C. 1907; re-en. Sec. 9220, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 509; re-en. Sec. 9220, R.C.M. 1935; R.C.M. 1947, 93-4101.

27-17-102. Claim and delivery in justice's court. Parts 2, 3, and 4 of this chapter and Rule 55(b)(2), M.R.Civ.P., are applicable to such claim when made in justices' courts, the powers therein given and duties imposed on sheriffs being extended to constables and the word "justice" substituted for "judge", and the justice, instead of the plaintiff or his attorney, may, in his discretion, by an endorsement in writing upon the affidavit, order the sheriff or constable to take the property mentioned in the affidavit.

History: En. Sec. 572, p. 156, Bannack Stat.; re-en. Sec. 678, p. 172, Cod. Stat. 1871; re-en. Sec. 738, 1st Div. Comp. Stat. 1879; re-en. Sec. 758, 1st Div. Comp. Stat. 1887; amd. Sec. 1570, C. Civ. Proc. 1895; re-en. Sec. 7030, Rev. C. 1907; re-en. Sec. 9663, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 870; re-en. Sec. 9663, R.C.M. 1935; R.C.M. 1947, 93-6912(part).

Cross-References

Default judgment, Rule 55(b)(2), M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Procedure for Obtaining Seizure of Property

27-17-201. Plaintiff's affidavit. When a delivery is claimed, an affidavit must be made by the person claiming the property or someone in his behalf, stating:

(1) facts which establish reasonable belief that the person claiming the property is the owner or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the property;

(2) that the property is wrongfully detained by the defendant;

(3) that the same has not been taken for a tax, assessment, or fine, pursuant to statute, or seized under an execution or an attachment against the property of the person claiming the property or, if so seized, that it is by statute exempt from seizure; and

(4) a particular description of the property and the actual value of the property.

History: En. Sec. 72, p. 56, Bannack Stat.; amd. Sec. 100, p. 151, L. 1867; re-en. Sec. 117, p. 49, Cod. Stat. 1871; re-en. Sec. 155, p. 75, L. 1877; re-en. Sec. 155, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 103, L. 1885; re-en. Sec. 157, 1st Div. Comp. Stat. 1887; re-en. Sec. 841, C. Civ. Proc. 1895; re-en. Sec. 6623, Rev. C. 1907; re-en. Sec. 9221, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 510; re-en. Sec. 9221, R.C.M. 1935; amd. Sec. 1, Ch. 362, L. 1975; R.C.M. 1947, 93-4102(1).

27-17-202. Description of property in affidavit. Where the affidavit describes two or more chattels of the same kind, it must state the number thereof, and where it describes a chattel in bulk, it must state the weight, measurement, or other quantity, as nearly as can be ascertained. Where it describes two or more chattels, it may, at the election of the plaintiff, state the aggregate value of all or, separately, the value of any chattel or of any class of chattels and the aggregate value of the remainder, if any.

History: En. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; R.C.M. 1947, 93-4117(part).

27-17-203. Order from judge. The sheriff shall make no seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign such an order if he is satisfied:

(1) that the party seeking possession of the property has made a prima facie showing of his right to possession and the necessity for seizure at a show cause hearing before him with at least 3 days' notice to the person in possession of the property; if such person cannot be found for personal service, notice posted on the property and in three public places in the county where the property is located is sufficient service for this purpose; or

(2) that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court, and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking possession.

History: En. Sec. 72, p. 56, Bannack Stat.; amd. Sec. 100, p. 151, L. 1867; re-en. Sec. 117, p. 49, Cod. Stat. 1871; re-en. Sec. 155, p. 75, L. 1877; re-en. Sec. 155, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 103, L. 1885; re-en. Sec. 157, 1st Div. Comp. Stat. 1887; re-en. Sec. 841, C. Civ. Proc. 1895; re-en. Sec. 6623, Rev. C. 1907; re-en. Sec. 9221, R.C.M. 1921; Cal.

C. Civ. Proc. Sec. 510; re-en. Sec. 9221, R.C.M. 1935; amd. Sec. 1, Ch. 362, L. 1975; R.C.M. 1947, 93-4102(2).

27-17-204. Endorsement requiring sheriff to take property. The plaintiff or his attorney may thereupon, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant.

History: En. Sec. 73, p. 56, Bannack Stat.; re-en. Sec. 101, p. 152, L. 1867; re-en. Sec. 118, p. 49, Cod. Stat. 1871; re-en. Sec. 156, p. 76, L. 1877; re-en. Sec. 156, 1st Div. Rev. Stat. 1879; re-en. Sec. 158, 1st Div. Comp. Stat. 1887; re-en. Sec. 842, C. Civ. Proc. 1895; re-en. Sec. 6624, Rev. C. 1907; re-en. Sec. 9222, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 511; re-en. Sec. 9222, R.C.M. 1935; R.C.M. 1947, 93-4103.

27-17-205. Plaintiff's undertaking — service and execution by sheriff. Upon receipt of the affidavit and notice with a written undertaking, executed by two or more sufficient sureties approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He must also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion or, if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

History: En. Sec. 74, p. 56, Bannack Stat.; en. Sec. 102, p. 152, L. 1867; re-en. Sec. 119, p. 49, Cod. Stat. 1871; re-en. Sec. 157, p. 76, L. 1877; re-en. Sec. 157, 1st Div. Rev. Stat. 1879; re-en. Sec. 159, 1st Div. Comp. Stat. 1887; re-en. Sec. 843, C. Civ. Proc. 1895; re-en. Sec. 6625, Rev. C. 1907; re-en. Sec. 9223, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 512; re-en. Sec. 9223, R.C.M. 1935; R.C.M. 1947, 93-4104.

27-17-206. Manner of seizure of concealed property. If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession and, if necessary, he may call to his aid the power of the county.

History: En. Sec. 107, p. 152, L. 1867; re-en. Sec. 124, p. 50, Cod. Stat. 1871; re-en. Sec. 166, p. 79, L. 1877; re-en. Sec. 166, 1st Div. Rev. Stat. 1879; re-en. Sec. 168, 1st Div. Comp. Stat. 1887; re-en. Sec. 852, C. Civ. Proc. 1895; re-en. Sec. 6634, Rev. C. 1907; re-en. Sec. 9232, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 517; re-en. Sec. 9232, R.C.M. 1935; R.C.M. 1947, 93-4113.

27-17-207. Seizure when part of property cannot be found. The sheriff must take a less number or quantity if the whole of the property described in the affidavit cannot be found.

History: En. Sec. 857, C. Civ. Proc. 1895; re-en. Sec. 6639, Rev. C. 1907; re-en. Sec. 9237, R.C.M. 1921; re-en. Sec. 9237, R.C.M. 1935; R.C.M. 1947, 93-4118.

27-17-208. Security for sheriff's costs when property seized. If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of an order for claim and delivery shall provide a bond or other security to pay for all costs that may be incurred as a result of the service of such order.

History: **En. Sec. 11, Ch. 88, L. 1987.**

Part 3

Procedure Following Seizure by Sheriff

27-17-301. Duty of sheriff to keep and deliver property. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

History: **En. Sec. 108, p. 153, L. 1867; re-en. Sec. 125, p. 51, Cod. Stat. 1871; re-en. Sec. 167, p. 79, L. 1877; re-en. Sec. 167, 1st Div. Rev. Stat. 1879; re-en. Sec. 169, 1st Div. Comp. Stat. 1887; re-en. Sec. 853, C. Civ. Proc. 1895; re-en. Sec. 6635, Rev. C. 1907; re-en. Sec. 9233, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 518; re-en. Sec. 9233, R.C.M. 1935; R.C.M. 1947, 93-4114.**

27-17-302. Sheriff's return of execution. The sheriff shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending within 20 days after taking the property mentioned therein.

History: **En. Sec. 110, p. 153, L. 1867; re-en. Sec. 127, p. 51, Cod. Stat. 1871; re-en. Sec. 169, p. 79, L. 1877; re-en. Sec. 169, 1st Div. Rev. Stat. 1879; re-en. Sec. 171, 1st Div. Comp. Stat. 1887; re-en. Sec. 855, C. Civ. Proc. 1895; re-en. Sec. 6637, Rev. C. 1907; re-en. Sec. 9235, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 520; re-en. Sec. 9235, R.C.M. 1935; R.C.M. 1947, 93-4116.**

27-17-303. Exception to plaintiff's sureties — justification — liability of sheriff. The defendant may, within 2 days after service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify on notice in like manner as upon bail on arrest; and the sheriff is responsible for the sufficiency of the sureties until the objection to them is waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot claim the property, as provided in 27-17-304.

History: **En. Sec. 103, p. 152, L. 1867; re-en. Sec. 120, p. 50, Cod. Stat. 1871; re-en. Sec. 158, p. 76, L. 1877; re-en. Sec. 158, 1st Div. Rev. Stat. 1879; re-en. Sec. 160, 1st Div. Comp. Stat. 1887; re-en. Sec. 844, C. Civ. Proc. 1895; re-en. Sec. 6626, Rev. C. 1907; re-en. Sec. 9224, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 513; re-en. Sec. 9224, R.C.M. 1935; R.C.M. 1947, 93-4105.**

27-17-304. When defendant may require return of property — his undertaking. At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant.

History: En. Sec. 104, p. 152, L. 1867; re-en. Sec. 121, p. 50, Cod. Stat. 1871; re-en. Sec. 163, p. 78, L. 1877; re-en. Sec. 163, 1st Div. Rev. Stat. 1879; re-en. Sec. 165, 1st Div. Comp. Stat. 1887; re-en. Sec. 849, C. Civ. Proc. 1895; re-en. Sec. 6631, Rev. C. 1907; re-en. Sec. 9229, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 514; re-en. Sec. 9229, R.C.M. 1935; R.C.M. 1947, 93-4110(part).

27-17-305. Return of part of the property. Where the plaintiff's affidavit states separately the value of one or more chattels or classes of chattels, the defendant may require, as prescribed in this chapter, the return of any or all of the chattels or classes of chattels the value of which is thus stated or of the portion thereof which has been taken.

History: En. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; R.C.M. 1947, 93-4117(part).

27-17-306. Justification of defendant's sureties — liability of sheriff. The defendant's sureties, upon notice to the plaintiff of not less than 2 or more than 5 days, shall justify before the judge or clerk in the same manner as upon bail on arrest, and upon such justification the sheriff must deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify or until the justification is completed or expressly waived and may retain the property until that time; but if they or others in their place fail to justify at the time or place appointed, he shall deliver the property to the plaintiff.

History: En. Sec. 105, p. 152, L. 1867; re-en. Sec. 122, p. 50, Cod. Stat. 1871; re-en. Sec. 164, p. 78, L. 1877; re-en. Sec. 164, 1st Div. Rev. Stat. 1879; re-en. Sec. 166, 1st Div. Comp. Stat. 1887; re-en. Sec. 850, C. Civ. Proc. 1895; re-en. Sec. 6632, Rev. C. 1907; re-en. Sec. 9230, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 515; re-en. Sec. 9230, R.C.M. 1935; R.C.M. 1947, 93-4111.

27-17-307. Procedure for qualification and justification of sureties. The qualification of sureties and their justification shall be such as are prescribed by chapter 16 in respect to bail upon an order of arrest.

History: En. Sec. 106, p. 152, L. 1867; re-en. Sec. 123, p. 50, Cod. Stat. 1871; re-en. Sec. 165, p. 78, L. 1877; re-en. Sec. 165, 1st Div. Rev. Stat. 1879; re-en. Sec. 167, 1st Div. Comp. Stat. 1887; re-en. Sec. 851, C. Civ. Proc. 1895; re-en. Sec. 6633, Rev. C. 1907; re-en. Sec. 9231, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 516; re-en. Sec. 9231, R.C.M. 1935; R.C.M. 1947, 93-4112.

27-17-308. Delivery of property to plaintiff if not returned to defendant. If a return of the property be not required within 5 days after the taking and serving notice to the defendant, it shall be delivered to the plaintiff, except as provided in 27-17-309. If the defendant procures a return under 27-17-305, the remainder must be delivered to the plaintiff, except as is otherwise prescribed in this chapter.

History: Ap. p. Sec. 104, p. 152, L. 1867; re-en. Sec. 121, p. 50, Cod. Stat. 1871; re-en. Sec. 163, p. 78, L. 1877; re-en. Sec. 163, 1st Div. Rev. Stat. 1879; re-en. Sec. 165, 1st Div. Comp. Stat. 1887; re-en. Sec. 849, C. Civ. Proc. 1895; re-en. Sec. 6631, Rev. C. 1907; re-en. Sec. 9229, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 514; re-en. Sec. 9229, R.C.M. 1935; Sec. 93-4110, R.C.M. 1947; Ap. p. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; Sec. 93-4117, R.C.M. 1947; R.C.M. 1947, 93-4110(part), 93-4117(part).

27-17-309. Claim of property by third person — plaintiff to indemnify sheriff. If the property taken be claimed by any other person than the defendant or his agent and such person make affidavit of his title thereto or right of the possession thereof, stating the grounds of such right or title, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made.

History: En. Sec. 109, p. 153, L. 1867; re-en. Sec. 126, p. 51, Cod. Stat. 1871; re-en. Sec. 168, p. 79, L. 1877; re-en. Sec. 168, 1st Div. Rev. Stat. 1879; re-en. Sec. 170, 1st Div. Comp. Stat. 1887; re-en. Sec. 854, C. Civ. Proc. 1895; re-en. Sec. 6636, Rev. C. 1907; re-en. Sec. 9234, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 519; re-en. Sec. 9234, R.C.M. 1935; R.C.M. 1947, 93-4115.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

27-17-310. Answer of defendant claiming third person entitled to property. The defendant may, by answer, defend on the ground that a third person was entitled to the property, without connecting himself with the latter's title.

History: En. Sec. 858, C. Civ. Proc. 1895; re-en. Sec. 6640, Rev. C. 1907; re-en. Sec. 9238, R.C.M. 1921; re-en. Sec. 9238, R.C.M. 1935; R.C.M. 1947, 93-4119.

Part 4

Judgment — Return of Property

27-17-401. Form of judgment. (1) In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or for the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

(2) The judgment in an action for claim and delivery in justices' courts must be entered substantially in the form required by subsection (1).

History: (1)En. Sec. 176, p. 77, Bannack Stat.; re-en. Sec. 200, p. 174, L. 1867; re-en. Sec. 240, p. 77, Cod. Stat. 1871; re-en. Sec. 291, p. 115, L. 1877; re-en. Sec. 291, 1st Div. Rev. Stat. 1879; re-en. Sec. 303, 1st Div. Comp. Stat. 1887; re-en. Sec. 1193, C. Civ. Proc. 1895; re-en. Sec. 6803, Rev. C. 1907; re-en. Sec. 9406, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 667; re-en. Sec. 9406, R.C.M. 1935; Sec. 93-5704, R.C.M. 1947; (2)En. Sec. 612, p. 164, Bannack Stat.; re-en. Sec. 718, p. 179, Cod. Stat. 1871; re-en. Sec. 778, 1st Div. Rev. Stat. 1879; re-en. Sec. 798, 1st Div. Comp. Stat. 1887; amd. Sec. 1624, C. Civ. Proc. 1895; re-en. Sec. 7050, Rev. C. 1907; re-en. Sec. 9683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 893; re-en. Sec. 9683, R.C.M. 1935; Sec. 93-7305, R.C.M. 1947; R.C.M. 1947, 93-5704, 93-7305(part).

27-17-402. Duty to return property in good condition. In all cases when a judgment is rendered, in an action to recover the possession of personal property, for the return thereof, or its value in case a return cannot be had, it is the duty of the party against whom such judgment shall be rendered to return the same in as good condition as the same was when possession thereof was taken by him.

History: En. Sec. 159, p. 77, L. 1877; re-en. Sec. 159, 1st Div. Rev. Stat. 1879; re-en. Sec. 161, 1st Div. Comp. Stat. 1887; re-en. Sec. 845, C. Civ. Proc. 1895; re-en. Sec. 6627, Rev. C. 1907; re-en. Sec. 9225, R.C.M. 1921; re-en. Sec. 9225, R.C.M. 1935; R.C.M. 1947, 93-4106.

27-17-403. Action for value of property and damages. In case such property, while in the possession of the party against whom such judgment shall be rendered or while unlawfully detained from the party entitled to the possession thereof, be materially injured or lessened in value by use or otherwise, then a return or offer to return shall not be deemed a compliance with the undertaking given for its return but an action may be maintained for the value thereof, as assessed by the jury or court, and damages for its detention.

History: En. Sec. 160, p. 77, L. 1877; re-en. Sec. 160, 1st Div. Rev. Stat. 1879; re-en. Sec. 162, 1st Div. Comp. Stat. 1887; re-en. Sec. 846, C. Civ. Proc. 1895; re-en. Sec. 6628, Rev. C. 1907; re-en. Sec. 9226, R.C.M. 1921; re-en. Sec. 9226, R.C.M. 1935; R.C.M. 1947, 93-4107.

27-17-404. Return of damaged property to officer for sale. In case such action to recover possession of personal property is brought against any sheriff or other officer who may have levied upon and seized the same under authority of any attachment or other process and judgment shall be rendered in favor of such officer for the return of the property, the party against whom such judgment is rendered may nevertheless make return of said property, notwithstanding the same may have been injured or lessened in value, and thereupon it is the duty of such officer to immediately advertise the same for sale as in cases of sales of property under execution and apply the proceeds of the sale thereof, after paying the costs, towards the payment and satisfaction of any judgment that may have been rendered.

History: En. Sec. 161, p. 77, L. 1877; re-en. Sec. 161, 1st Div. Rev. Stat. 1879; re-en. Sec. 163, 1st Div. Comp. Stat. 1887; re-en. Sec. 847, C. Civ. Proc. 1895; re-en. Sec. 6629, Rev. C. 1907; re-en. Sec. 9227, R.C.M. 1921; re-en. Sec. 9227, R.C.M. 1935; R.C.M. 1947, 93-4108.

27-17-405. Continuing liability of sureties. Such second taking of such property, referred to in 27-17-404, does not release or discharge the sureties on any undertaking given for the return of such property, but an action may be maintained on such undertaking and recovery thereon had unless the property shall have been actually returned in accordance with the judgment rendered.

History: En. Sec. 162, p. 77, L. 1877; re-en. Sec. 162, 1st Div. Rev. Stat. 1879; re-en. Sec. 164, 1st Div. Comp. Stat. 1887; re-en. Sec. 848, C. Civ. Proc. 1895; re-en. Sec. 6630, Rev. C. 1907; re-en. Sec. 9228, R.C.M. 1921; re-en. Sec. 9228, R.C.M. 1935; R.C.M. 1947, 93-4109.

CHAPTER 18

PREJUDGMENT ATTACHMENT

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Chapter Cross-References

Execution of judgment, Title 25, ch. 13.

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Part 1

General Provisions

27-18-101. Cases in which property may be attached. (1) Property may be attached in:

(a) an action upon a contract, express or implied, for the direct payment of money where the contract:

(i) is not secured by any mortgage or lien upon real property; or

(ii) is originally secured and such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; and

(b) an action based upon a statutory stockholders' liability.

(2) Attachment may not issue if the defendant gives security to pay the judgment.

(3) For the purpose of this section, the guaranty of a loan in which the only condition precedent to the obligation of the guarantor is the default of the principal is an unconditional contract for the direct payment of money.

History: En. Sec. 890, C. Civ. Proc. 1895; re-en. Sec. 6656, Rev. C. 1907; re-en. Sec. 9256, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 537; amd. Sec. 1, Ch. 82, L. 1931; re-en. Sec. 9256, R.C.M. 1935; amd. Sec. 11-159, Ch. 264, L. 1963; amd. Sec. 1, Ch. 299, L. 1977; R.C.M. 1947, 93-4301(2), (3); amd. Sec. 1, Ch. 194, L. 1985.

27-18-102. What property subject to attachment. (1) Except as provided in subsection (2), the rights or shares which the defendant has in the stock of any corporation or company, together with the interest and profits thereon, all debts due the defendant, and all other property in this state of the defendant not exempt from execution may be attached and, if judgment is recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment.

(2) In any action in which the amount sued for is $10 or less, the wages and earnings of the debtor or defendant for his personal services rendered at any time within 30 days before the commencement of the action are exempt from attachment.

History: (1)En. Sec. 95, p. 61, Bannack Stat.; amd. Sec. 124, p. 157, L. 1867; re-en. Sec. 141, p. 55, Cod. Stat. 1871; re-en. Sec. 183, p. 84, L. 1877; re-en. Sec. 183, 1st Div. Rev. Stat. 1879; re-en. Sec. 185, 1st Div. Comp. Stat. 1887; re-en. Sec. 894, C. Civ. Proc. 1895; re-en. Sec. 6661, Rev. C. 1907; re-en. Sec. 9261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 541; re-en. Sec. 9261, R.C.M. 1935; Sec. 93-4306, R.C.M. 1947; (2)En. Sec. 1, Ch. 49, Ex. L. 1933; re-en. Sec. 9429.1, R.C.M. 1935; Sec. 93-5817, R.C.M. 1947; R.C.M. 1947, 93-4306, 93-5817; amd. Sec. 39, Ch. 12, L. 1979.

Cross-References

Attachment and execution — government property, 2-9-318.

Public Employees' Retirement System — exemption from execution, 19-3-105.

Teachers' retirement — exemption from execution, 19-4-706.

Judges' retirement — exemption from execution, 19-5-704.

Highway patrol retirement — exemption from execution, 19-6-705.

Sheriffs' retirement — exemption from execution, 19-7-705.

Game wardens' retirement — exemption from execution, 19-8-805.

Police retirement — exemption from execution, 19-9-1006, 19-10-504.

Firefighters' retirement — exemption from execution, 19-11-612.

Property exempt from execution, Title 25, ch. 13, part 6.

Shares of stock subject to attachment, 32-2-264.

Partner's right to specific partnership property, 35-10-502, 35-10-505.

Cooperative associations — shares exempt from execution, 35-15-404.

Homestead exemption, 70-32-201.

27-18-103 through 27-18-110 reserved.

27-18-111. Court record not to be open to public until writ returned. In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint or the issuing of such attachment until after the filing of return of service of attachment.

History: En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907; re-en. Sec. 455, R.C.M. 1921; Cal. Pol. C. Sec. 1032; re-en. Sec. 455, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1945; R.C.M. 1947, 59-512(part).

27-18-112. Attachment book to be kept by county clerk. There must be kept in the office of the county clerk of each county a book called "attachment book", in which must be entered by such clerk, in alphabetical order, the names of all persons against whom any writ or notice of attachment has been filed in his office. There must also be entered in said book the time such writ or notice was filed. Such entry must be made under an appropriate head for that purpose.

History: En. Sec. 203, p. 89, L. 1877; re-en. Sec. 203, 1st Div. Rev. Stat. 1879; re-en. Sec. 205, 1st Div. Comp. Stat. 1887; amd. Sec. 924, C. Civ. Proc. 1895; re-en. Sec. 6691, Rev. C. 1907; re-en. Sec. 9293, R.C.M. 1921; re-en. Sec. 9293, R.C.M. 1935; R.C.M. 1947, 93-4340.

Part 2

Procedure for Obtaining Writ

27-18-201. Time for attaching property. A plaintiff, at the time of issuing the summons or at any time afterward, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered.

History: En. Sec. 890, C. Civ. Proc. 1895; re-en. Sec. 6656, Rev. C. 1907; re-en. Sec. 9256, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 537; amd. Sec. 1, Ch. 82, L. 1931; re-en. Sec. 9256, R.C.M. 1935; amd. Sec. 11-159, Ch. 264, L. 1963; amd. Sec. 1, Ch. 299, L. 1977; R.C.M. 1947, 93-4301(1).

27-18-202. Plaintiff's affidavit. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone in his behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking with him property, money, or other effects which might be subjected to payment of the debt;

(b) is disposing or about to dispose of his property which would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property which would be subject to execution; or

(d) is likely to suffer liens or encumbrances on his property which would be subject to execution;

(4) a particular description and the actual value of the property to be attached.

History: **En. 93-4302.1 by Sec. 2, Ch. 299, L. 1977; R.C.M. 1947, 93-4302.1.**

27-18-203. Affidavit requirements when debt not yet due. Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the same shall have become due when it shall appear by the affidavit, in addition to what is required in 27-18-202:

(1) that the defendant is leaving or is about to leave this state, taking with him property, moneys, or other effects which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or

(2) that the defendant is disposing of his property or is about to dispose of his property, subject to execution, for the purpose of defrauding his creditors.

History: **En. Sec. 1, p. 141, L. 1899; re-en. Sec. 6658, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1911; re-en. Sec. 9258, R.C.M. 1921; re-en. Sec. 9258, R.C.M. 1935; R.C.M. 1947, 93-4303(part).**

27-18-204. Plaintiff's undertaking. Before issuing the writ, the court must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if such amount be $1,000 or under or, in case the amount so claimed by plaintiff shall exceed $1,000, then in a sum equal to such amount. In no case shall an undertaking be required exceeding in amount the sum of $20,000. The condition of such undertaking shall be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages he may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking.

History: **En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(1).**

27-18-205. When judge may issue writ — notice. A judge of a court having jurisdiction of the cause may issue a writ of attachment when:

(1) he has received the affidavit described in 27-18-202;

(2) he has approved the undertaking required in 27-18-204; and

(3) the party seeking attachment has made a prima facie showing:

(a) in the case of real property, of his right to attachment and the necessity for seizure;

(b) in the case of personal property:

(i) of his right to attachment and the necessity for seizure at a show cause hearing before the court with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located; or

(ii) of his right to attachment and the necessity for seizure and that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court, and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking attachment.

History: En. 93-4304.1 by Sec. 4, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.1.

27-18-206. Issuance of several writs to different counties. Several writs may be issued at the same time to the sheriffs of different counties.

History: En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part).

27-18-207. Alias writs. Whenever a writ of attachment has been lost or whenever it shall appear from the sheriff's return thereof that no property of the party or parties defendant has been levied upon or that the levy made is insufficient to satisfy the full amount of the plaintiff's demand or if, for any reason, the levy of the original writ is void or ineffective, the clerk of the court, upon written demand of the plaintiff or his attorney, shall issue an alias writ in the same form as the original, but no such alias writ shall be issued in an action after the commencement of the trial thereof. No new or additional affidavit or undertaking on attachment shall be required for the issuance of an alias writ. Alias writs of attachment may be issued to the sheriffs of different counties.

History: En. Sec. 1, Ch. 121, L. 1921; re-en. Sec. 9275, R.C.M. 1921; re-en. Sec. 9275, R.C.M. 1935; R.C.M. 1947, 93-4322.

Part 3

Writ of Attachment — Execution

27-18-301. Form and content of writ — defendant's undertaking to prevent levy. (1) The writ must be directed to the sheriff of any county in which property of such defendant may be and must require him to:

(a) attach and safely keep all the property of such defendant within his county, not exempt from attachment, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, take such undertaking.

(2) The undertaking must be to the plaintiff in the action and must be approved in writing on the back thereof by the plaintiff or his attorney or,

upon their refusal, by the judge of the district court of the same county as the residence of the sheriff.

History: En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part); amd. Sec. 40, Ch. 12, L. 1979.

27-18-302. Filing of undertaking — sheriff's liability. The sheriff shall thereupon file said undertaking with the clerk of the district court out of which said writ of attachment emanates, and such sheriff shall thereupon cease to be liable under said writ, and any and all actions on such undertaking shall be against the obligors named in such undertaking.

History: En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part).

27-18-303. Order of execution when several writs against same defendant. The sheriff must endorse upon each writ of attachment received by him the time when the same was received, specifying the day, hour, and minute. The writ of attachment first placed in the hands of the sheriff must be executed first, and when there are several writs against the same defendant, they must be executed in the order in which they were received by the sheriff.

History: En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part).

27-18-304. When sheriff may require written specification of property to be levied upon. No written specification of property to be levied upon may be required by the sheriff, except as to property referred to in 27-18-403 and 27-18-405(2).

History: En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part); amd. Sec. 41, Ch. 12, L. 1979.

27-18-305. Security for sheriff's costs. If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of attachment shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part).

27-18-306. Sheriff's duty to execute. The sheriff to whom the writ is directed and delivered must execute the same without delay and, if the undertaking mentioned in 27-18-301 be not given, as provided in part 4. He may levy, from time to time and as often as is necessary, until the amount for which it was issued has been secured. In no case shall the sheriff attach more property than appears necessary to satisfy the plaintiff's demand.

History: **Ap. p. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; Sec. 93-4307, R.C.M. 1947; Ap. p. Sec. 898, C. Civ. Proc. 1895; re-en. Sec. 6665, Rev. C. 1907; re-en. Sec. 9265, R.C.M. 1921; re-en. Sec. 9265, R.C.M. 1935; Sec. 93-4312, R.C.M. 1947; Ap. p. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part), 93-4307(part), 93-4312(part).**

Cross-References

Refusal of Sheriff to levy — liability, 7-32-2131.

27-18-307. Lien of attachment. All liens by attachment shall accrue at the time the property of the defendant shall be attached by the officer charged with the execution of the writ, in the order in which the writs are levied, and said lien shall not be affected by any subsequent attachment or by any judgment obtained subsequent thereto.

History: **En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part).**

27-18-308. Attachment not released by defendant's death. The death of the defendant does not release the attached property, and a lien of the attachment may be enforced as in the case of other liens.

History: **En. Sec. 907, C. Civ. Proc. 1895; re-en. Sec. 6674, Rev. C. 1907; re-en. Sec. 9274, R.C.M. 1921; re-en. Sec. 9274, R.C.M. 1935; R.C.M. 1947, 93-4321.**

Part 4

Manner of Attaching Property

27-18-401. Sheriff to take custody of books and evidences of title. The sheriff must take into his custody all books of account, vouchers, and other papers relating to the personal property attached and all evidences of the defendant's title to the real property attached, which he must safely keep.

History: **En. Sec. 898, C. Civ. Proc. 1895; re-en. Sec. 6665, Rev. C. 1907; re-en. Sec. 9265, R.C.M. 1921; re-en. Sec. 9265, R.C.M. 1935; R.C.M. 1947, 93-4312(part).**

27-18-402. Real property in defendant's name. Real property standing upon the records of the county in the name of the defendant must be attached by filing with the county clerk a copy of the writ, together with the description of the property attached and a notice that it is attached.

History: **En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat.**

1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(1).

27-18-403. Real property in another's name. Real property or an interest therein belonging to the defendant and held by any other person or standing on the records of the county in the name of any other person must be attached by filing with the county clerk a copy of the writ, together with a description of the property and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached. The county clerk must index such attachment when filed in the names both of the defendant and of the person by whom the property is held or in whose name it stands on the record.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(2).

27-18-404. Personal property capable of manual delivery. Personal property capable of manual delivery must be attached by taking it into custody, except in cases in which personal property capable of manual delivery is in the possession of a third person, and such personal property, so in the possession of a third person, may be attached in the same manner as debts or credits and other personal property not capable of manual delivery, as hereinafter provided.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(3).

27-18-405. Debts, credits, and personal property in control of third person or not capable of manual delivery. (1) Debts or credits and personal property not capable of manual delivery and personal property in the possession of a third person must be attached by leaving with the person owing such debt or having in his possession or under his control such credits and personal property or with his agent a copy of the writ and a notice that the debts owing by him to the defendant or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such writ.

(2) Upon receiving information in writing from the plaintiff or his attorney that any person has in his possession or under his control any credits or other personal property belonging to the defendant or is owing any debt to the defendant, the sheriff must serve upon such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of said writ.

(3) Debts and credits attached may be collected by the sheriff if the same can be done without suit. The sheriff's receipt is a sufficient discharge for the amount paid.

History: (1)En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; Sec. 93-4307, R.C.M. 1947; (2)En. Sec. 97, p. 62, Bannack Stat.; re-en. Sec. 126, p. 157, L. 1867; re-en. Sec. 144, p. 56, Cod. Stat. 1871; re-en. Sec. 186, p. 85, L. 1877; re-en. Sec. 186, 1st Div. Rev. Stat. 1879; re-en. Sec. 188, 1st Div. Comp. Stat. 1887; re-en. Sec. 899, C. Civ. Proc. 1895; re-en. Sec. 6666, Rev. C. 1907; re-en. Sec. 9266, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 543; re-en. Sec. 9266, R.C.M. 1935; Sec. 93-4313, R.C.M. 1947; (3)En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879; re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; Sec. 93-4317, R.C.M. 1947; R.C.M. 1947, 93-4307(5), 93-4313, 93-4317(part).

27-18-406. Money, credits, or other property in control of public officer or board. Money, credits, or other property belonging to or due and owing to another, in the possession of or under the control of a public officer or board, including all officers or boards of a county, municipal corporation, and school district or state board or state government, may be attached or garnished while in such possession or under such control by making service, as provided in this part, upon the clerk of the county or chairman of the board of county commissioners, the city clerk or mayor of a municipal corporation, or the clerk of the board of school trustees or chairman of such board, as the case may be.

History: En. Sec. 1, p. 159, L. 1901; re-en. Sec. 6692, Rev. C. 1907; re-en. Sec. 9294, R.C.M. 1921; re-en. Sec. 9294, R.C.M. 1935; R.C.M. 1947, 93-4341.

27-18-407. Liability of third persons controlling property or debts and served by sheriff. All persons having in their possession or under their control any credits or other personal property belonging to the defendant or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice shall be, unless such property be delivered up or transferred or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts until the attachment be discharged or any judgment recovered by him be satisfied.

History: En. Sec. 98, p. 62, Bannack Stat.; re-en. Sec. 127, p. 157, L. 1867; re-en. Sec. 145, p. 56, Cod. Stat. 1871; re-en. Sec. 187, p. 85, L. 1877; re-en. Sec. 187, 1st Div. Rev. Stat. 1879; re-en. Sec. 189, 1st Div. Comp. Stat. 1887; re-en. Sec. 900, C. Civ. Proc. 1895; re-en. Sec. 6667, Rev. C. 1907; re-en. Sec. 9267, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 544; re-en. Sec. 9267, R.C.M. 1935; R.C.M. 1947, 93-4314.

27-18-408. Judgments. Judgments standing in favor of and in the name of the defendant upon the records of the clerk of the district court must be attached by leaving with the said clerk of the district court a copy of the writ and a notice stating that the said judgment is attached in pursuance of such writ. The clerk of the district court must index and keep a record of all attachments of judgments thereunder, and such attachment is binding on the judgment creditor.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(6).

27-18-409. Investment securities and stocks. Investment securities, as defined in the Uniform Commercial Code, may be attached or levied upon only by seizure by the officer making the attachment or levy; provided that such a security which has been surrendered to the issuer may be attached or levied upon by leaving with the president or other head of the same or the secretary, cashier, or other managing agent thereof a copy of the writ and a notice stating that the security of the defendant is attached in pursuance of such writ. Stocks or shares or interest in stocks or shares of any corporation or company, other than such investment securities, may be attached either by seizure or by leaving with the president or other head of the same or the secretary, cashier, or other managing agent thereof a copy of the writ and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(4).

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

U.C.C. — attachment or levy upon security, 30-8-317.

27-18-410. Corporate stock — service on secretary of state. In addition to the method prescribed in 27-18-409 for attaching stock or shares or interest therein of any corporation or company, if the president or other head of the same or the secretary, cashier, or other managing agent thereof does not live or cannot be found in Montana and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that such officer or agent does not live or cannot be found in Montana, the clerk shall make an order directing the writ to be served upon the secretary of state of Montana or, in his absence from his office, upon the deputy secretary of state. When such order has been made, the writ of attachment shall be served upon the secretary of state or deputy secretary of state by leaving with him a copy of the writ and a notice that the stock or shares or interest therein of such corporation or company belonging to the defendant is attached in pursuance of the writ.

History: En. Sec. 1, Ch. 128, L. 1937; R.C.M. 1947, 93-4308; amd. Sec. 42, Ch. 12, L. 1979.

27-18-411. Duty of secretary of state — fees. (1) Upon such service being so made upon the secretary of state or his deputy, the secretary of state or his deputy shall promptly mail the copy of the writ, notice, and copy of said order by registered or certified mail to the address of such corporation at its principal home office, as shown by the papers on file in the office of secretary of state, and shall make out and mail to the clerk of the court in which the action is pending a certificate of such mailing, which shall have attached thereto the registry receipt for such letter, that such attachment so made upon the secretary of state as herein provided shall be effective and the said stock or shares or the interest therein of the defendant shall be attached upon the service of the writ, as herein provided.

(2) At the time of the service of said writ, there shall be paid to the secretary of state a fee of $2, which shall be by him paid into the state treasury and which may be taxed as cost by the plaintiff.

History: En. Sec. 2, Ch. 128, L. 1937; R.C.M. 1947, 93-4309.

27-18-412. Interest of defendant in decedent's estate. The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that said interest is attached. Such attachment shall not impair the powers of the representative over the property for the purposes of administration. A copy of said writ of attachment and of said notice shall also be filed in the office of the clerk of the court in which said estate is being administered, and the personal representative shall report such attachment to the court when any petition for distribution is filed; and in the decree made upon such petition, distribution shall be ordered to such heir, legatee, or devisee, but delivery of such property shall be ordered to the officer making the levy, subject to the claim of such heir, legatee, or devisee or any person claiming under him. The property shall not be delivered to the officer making the levy until the decree distributing such interest has become final.

History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(7).

27-18-413. Personal property subject to a security interest. Personal property subject to a security interest may be taken on attachment issued at the suit of a creditor (other than the secured party) of the debtor under the security agreement; but before the property is taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed if such statement is filed with a county clerk and recorder or, if such statement is filed with another filing officer pursuant to law, with such other filing officer, payable to the order of the secured party.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part); amd. Sec. 43, Ch. 12, L. 1979.

27-18-414. Duty of secured party. (1) The secured party under any security agreement of record shall, upon 15 days' notice in writing served upon him in person by any creditor of the debtor seeking to satisfy a demand of such creditor against the debtor, be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party; and such affidavit shall state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of whatsoever kind, whether on principal or interest, made by the debtor to the date of the execution of such affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If, within 15 days from the service of any such demand in writing on the secured party by any creditor of the debtor, the secured party shall fail, refuse, or neglect to file the affidavit herein required, the security agreement shall be of no force or effect as against such creditor upon the seizure of any such personal property on attachment.

(2) In the event the amount shown to be due is paid to the county treasurer or to a filing officer, as aforesaid, or to the secured party in satisfaction of the security agreement by any attaching creditor against the debtor, the secured party shall be required to surrender to the county treasurer or such filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which security agreement or other evidence of indebtedness shall be delivered by the secured party, county treasurer, or filing officer to the attaching creditor.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Part 5

Proceedings in Aid of Attachment

27-18-501. Examination under oath of defendant or person controlling property or debts — order that property be delivered. Any person owing debts to the defendant or having in his possession or under his control any credits or other personal property belonging to the defendant may be required to attend before the court or judge or referee appointed by the court or judge and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery in the hands or under the control of such person or of the defendant to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

History: En. Sec. 99, p. 62, Bannack Stat.; re-en. Sec. 128, p. 158, L. 1867; re-en. Sec. 146, p. 56, Cod. Stat. 1871; re-en. Sec. 188, p. 86, L. 1877; re-en. Sec. 188, 1st Div. Rev. Stat. 1879; re-en. Sec. 190, 1st Div. Comp. Stat. 1887; re-en. Sec. 901, C. Civ. Proc. 1895; re-en.

Sec. 6668, Rev. C. 1907; re-en. Sec. 9268, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 545; re-en. Sec. 9268, R.C.M. 1935; R.C.M. 1947, 93-4315.

27-18-502. Person holding property to give sheriff certificate of defendant's interest. Upon the application of a sheriff holding a writ of attachment, the president or other head of an association or corporation or the secretary, cashier, or managing agent thereof or a debtor of the defendant or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant must furnish to the sheriff a certificate, under his hand, specifying his right to a number of shares of the defendant in the stock of the association or corporation, with all dividends declared or encumbrances thereon, or the amount, nature, and description of the property held for the benefit of the defendant or of the defendant's interest in property so held or of the debt or demand owing to the defendant, as the case requires.

History: En. Sec. 896, C. Civ. Proc. 1895; re-en. Sec. 6663, Rev. C. 1907; re-en. Sec. 9263, R.C.M. 1921; re-en. Sec. 9263, R.C.M. 1935; R.C.M. 1947, 93-4310.

27-18-503. Order to person holding property to submit to examination under oath. If a person to whom application is made, as prescribed in 27-18-502, refuses to give such certificate or if it is made to appear, by affidavit, to the satisfaction of the court or a judge thereof, that there is reason to suspect that a certificate given by him is untrue or that it failed fully to set forth the facts required to be shown thereby, the court or judge may make an order directing him to attend, at a specified time and at a place within the county to which the writ is issued, and submit to an examination under oath concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named therein.

History: En. Sec. 897, C. Civ. Proc. 1895; re-en. Sec. 6664, Rev. C. 1907; re-en. Sec. 9264, R.C.M. 1921; re-en. Sec. 9264, R.C.M. 1935; R.C.M. 1947, 93-4311.

Part 6

Procedure Following Attachment — Return of Writ

27-18-601. Sheriff to retain nonperishable attached property and proceeds of sales. The proceeds and other property attached by the sheriff must be retained by him to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment.

History: En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879; re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; R.C.M. 1947, 93-4317(part).

27-18-602. Claim of attached property by third person — plaintiff to indemnify sheriff. If personal property attached be claimed by a third person, he shall give notice thereof to the sheriff and deliver to him an affidavit, stating his claim, ownership, and a description of the property; and unless the plaintiff, within 10 days after receiving notice thereof, give the sheriff a good and sufficient bond to indemnify him against loss or damage by reason of such retaining said property, the sheriff shall deliver the same to such person.

History: En. Sec. 149, p. 57, Cod. Stat. 1871; re-en. Sec. 191, p. 87, L. 1877; re-en. Sec. 191, 1st Div. Rev. Stat. 1879; re-en. Sec. 193, 1st Div. Comp. Stat. 1887; en. Sec. 906, C. Civ. Proc. 1895; re-en. Sec. 6673, Rev. C. 1907; re-en. Sec. 9273, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 549; re-en. Sec. 9273, R.C.M. 1935; R.C.M. 1947, 93-4320.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

27-18-603. Sheriff's inventory of attached property — cooperation of persons controlling credits or debts. (1) The sheriff must make a full inventory of the property attached and return the same with the writ. When the sheriff has levied several writs of attachment on the same property, only one inventory must be made.

(2) To enable him to make such return as to debts and credits attached, he must request, at the time of service, the person owing the debt or having the credit to give him the memorandum, stating the amount and description of each; and if such memorandum be refused, the sheriff may apply upon 1 day's notice to the court or judge for an order to compel such memorandum to be given. If the order be granted, it shall also direct the payment of costs of the motion by the person refusing.

History: En. Sec. 100, p. 63, Bannack Stat.; amd. Sec. 129, p. 158, L. 1867; re-en. Sec. 147, p. 57, Cod. Stat. 1871; re-en. Sec. 189, p. 86, L. 1877; re-en. Sec. 189, 1st Div. Rev. Stat. 1879; re-en. Sec. 191, 1st Div. Comp. Stat. 1887; re-en. Sec. 902, C. Civ. Proc. 1895; re-en. Sec. 6669, Rev. C. 1907; re-en. Sec. 9269, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 546; re-en. Sec. 9269, R.C.M. 1935; R.C.M. 1947, 93-4316.

27-18-604. Sheriff's return of writ. The sheriff must return the writ of attachment with the summons if issued at the same time, otherwise, within 20 days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

History: En. Sec. 114, p. 66, Bannack Stat.; re-en. Sec. 141, p. 160, L. 1867; re-en. Sec. 159, p. 59, Cod. Stat. 1871; re-en. Sec. 201, p. 89, L. 1877; re-en. Sec. 201, 1st Div. Rev. Stat. 1879; re-en. Sec. 203, 1st Div. Comp. Stat. 1887; amd. Sec. 919, C. Civ. Proc. 1895; re-en. Sec. 6686, Rev. C. 1907; re-en. Sec. 9287, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 559; re-en. Sec. 9287, R.C.M. 1935; R.C.M. 1947, 93-4334(part).

Part 7

Methods of Defending Against Attachment

27-18-701. Right to hearing following seizure without notice — notice of right. When a writ has been issued upon real property or upon the showing specified in 27-18-205(3)(b)(ii), the defendant may challenge the seizure of the property at a hearing before the court to be held within 3 days after the seizure. Notice of the right to a postseizure hearing shall be served personally on the defendant, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located.

History: En. 93-4304.2 by Sec. 5, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.2(1).

27-18-702. When writ quashed. At such hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ shall be quashed if the court makes a preliminary finding that:

(1) the plaintiff cannot establish the prima facie validity of his claim; or

(2) the plaintiff cannot establish by a preponderance of the evidence the need for the continued attachment of the defendant's property.

History: En. 93-4304.2 by Sec. 5, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.2(2).

27-18-703 through 27-18-710 reserved.

27-18-711. Motion to discharge writ improperly issued. The defendant may also, at any time either before or after the release of the attached property or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought or to a judge thereof that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

History: En. Sec. 138, p. 160, L. 1867; re-en. Sec. 156, p. 59, Cod. Stat. 1871; amd. Sec. 1, p. 48, L. 1874; amd. Sec. 198, p. 89, L. 1877; re-en. Sec. 198, 1st Div. Rev. Stat. 1879; re-en. Sec. 200, 1st Div. Comp. Stat. 1887; en. Sec. 914, C. Civ. Proc. 1895; re-en. Sec. 6681, Rev. C. 1907; re-en. Sec. 9282, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 556; re-en. Sec. 9282, R.C.M. 1935; R.C.M. 1947, 93-4329.

27-18-712. Use of affidavits to support or oppose motion. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was made.

History: En. Sec. 139, p. 160, L. 1867; re-en. Sec. 157, p. 59, Cod. Stat. 1871; re-en. Sec. 199, p. 89, L. 1877; re-en. Sec. 199, 1st Div. Rev. Stat. 1879; re-en. Sec. 201, 1st Div. Comp. Stat. 1887; re-en. Sec. 915, C. Civ. Proc. 1895; re-en. Sec. 6682, Rev. C. 1907; re-en. Sec. 9283, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 557; re-en. Sec. 9283, R.C.M. 1935; R.C.M. 1947, 93-4330.

27-18-713. Decision of court. If upon such application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged. But the court or judge may allow the plaintiff to amend his affidavit or undertaking.

History: En. Sec. 140, p. 160, L. 1867; re-en. Sec. 158, p. 59, Cod. Stat. 1871; re-en. Sec. 200, p. 89, L. 1877; re-en. Sec. 200, 1st Div. Rev. Stat. 1879; re-en. Sec. 202, 1st Div. Comp. Stat. 1887; amd. Sec. 916, C. Civ. Proc. 1895; re-en. Sec. 6683, Rev. C. 1907; re-en. Sec. 9284, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 558; re-en. Sec. 9284, R.C.M. 1935; R.C.M. 1947, 93-4331.

27-18-714 reserved.

27-18-715. Exception to plaintiff's sureties. At any time within 30 days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

History: En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ.

Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(2).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-18-716. Justification of sureties. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 days or more than 10 days, must justify before a judge of the district court, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the judge shall issue an order vacating the writ of attachment.

History: En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(3).

27-18-717 through 27-18-720 reserved.

27-18-721. Proceedings to release attachment. Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending or to the judge thereof for an order to discharge the attachment, wholly or in part; and upon the execution of the undertaking mentioned in 27-18-722, an order may be made releasing from the operation of the attachment any or all of the property attached; and all of the property so released and all of the proceeds of the sale thereof must be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

History: En. Sec. 108, p. 65, Bannack Stat.; re-en. Sec. 136, p. 159, L. 1867; amd. Sec. 154, p. 58, Cod. Stat. 1871; re-en. Sec. 196, p. 88, L. 1877; re-en. Sec. 196, 1st Div. Rev. Stat. 1879; re-en. Sec. 198, 1st Div. Comp. Stat. 1887; amd. Sec. 912, C. Civ. Proc. 1895; re-en. Sec. 6679, Rev. C. 1907; re-en. Sec. 9280, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 554; re-en. Sec. 9280, R.C.M. 1935; R.C.M. 1947, 93-4327.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-18-722. Defendant's undertaking — justification of sureties. Before making such order, the court or judge must require an undertaking on behalf of the defendant, by at least two sureties, residents and freeholders or householders in the state, to the effect that in case the plaintiff recover judgment in the action, the defendant will, on demand, redeliver the attached property so released to the proper officer to be applied to the payment of the judgment or, in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or judge making the order may fix the sum for which the undertaking shall be executed, and if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached cannot be released without their justification, if the same be required.

History: En. Sec. 109, p. 65, Bannack Stat.; en. Sec. 137, p. 159, L. 1867; amd. Sec. 2, p. 67, L. 1869; re-en. Sec. 155, p. 58, Cod. Stat. 1871; amd. Sec. 1, p. 48, L. 1874; amd. Sec. 197, p. 88, L. 1877; re-en. Sec. 197, 1st Div. Rev. Stat. 1879; re-en. Sec. 199, 1st Div. Comp. Stat. 1887; amd. Sec. 913, C. Civ. Proc. 1895; re-en. Sec. 6680, Rev. C. 1907; re-en. Sec. 9281, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 555; re-en. Sec. 9281, R.C.M. 1935; R.C.M. 1947, 93-4328.

27-18-723 and 27-18-724 reserved.

27-18-725. Motion to vacate or modify writ or increase security. The defendant or a person who has acquired a lien upon or interest in his property after it was attached may, at any time before the actual application of the attached property or the proceeds thereof to the payment of a judgment recovered in the action, apply to vacate or modify the writ of attachment or to increase the security given by the plaintiff or for one or more of those forms of release together or in the alternative.

History: En. Sec. 917, C. Civ. Proc. 1895; re-en. Sec. 6684, Rev. C. 1907; re-en. Sec. 9285, R.C.M. 1921; re-en. Sec. 9285, R.C.M. 1935; R.C.M. 1947, 93-4332.

27-18-726. Proceedings on motion. An application specified in 27-18-725 may be founded only upon:

(1) the papers upon which the writ was granted, in which case it must be made to the court or judge, with or without notice as the court or judge deems proper; or

(2) proof by affidavits on the part of the defendant or a person who has acquired a lien upon or interest in his property after it was attached, in which case it must be made to the court or judge upon notice and may be opposed by new proof, by affidavit or other evidence on the part of the plaintiff, tending to sustain any grounds of attachment.

History: En. Sec. 918, C. Civ. Proc. 1895; re-en. Sec. 6685, Rev. C. 1907; re-en. Sec. 9286, R.C.M. 1921; re-en. Sec. 9286, R.C.M. 1935; R.C.M. 1947, 93-4333.

27-18-727 through 27-18-730 reserved.

27-18-731. Filing of order discharging or releasing attachment of real property. Whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order must be filed in the office of the county clerk in which the notice of the attachment has been filed and be indexed in like manner.

History: En. Sec. 114, p. 66, Bannack Stat.; re-en. Sec. 141, p. 160, L. 1867; re-en. Sec. 159, p. 59, Cod. Stat. 1871; re-en. Sec. 201, p. 89, L. 1877; re-en. Sec. 201, 1st Div. Rev. Stat. 1879; re-en. Sec. 203, 1st Div. Comp. Stat. 1887; amd. Sec. 919, C. Civ. Proc. 1895; re-en. Sec. 6686, Rev. C. 1907; re-en. Sec. 9287, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 559; re-en. Sec. 9287, R.C.M. 1935; R.C.M. 1947, 93-4334(part).

27-18-732. Release of attachment of real property by clerk when action not prosecuted — filing. If a writ of attachment has been levied on real property, as provided in part 4, and no proceedings have been taken in the action in which the attachment was issued for a period of 5 years, the clerk of court shall, upon application of the defendant or the record owner of such real property, issue a release of the attachment and a copy of such release shall be filed with the county clerk where the writ of attachment and notice thereof is filed and the county clerk shall file and index such release as any other releases of attachment.

History: En. Sec. 1, Ch. 97, L. 1965; R.C.M. 1947, 93-4331.1.

Part 8

Sale of Attached Property

27-18-801. Sheriff to sell perishable property. If any of the property attached be perishable, the sheriff must sell the same in the manner in which such property is sold on execution.

History: En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879; re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; R.C.M. 1947, 93-4317(part).

27-18-802. Authority of court to order sale of property. Whenever property has been taken by an officer under a writ of attachment and it is made to appear satisfactorily to the court or a judge thereof that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution and the proceeds to be deposited in the court to abide the judgment in the action.

History: En. Sec. 437, p. 132, Bannack Stat.; re-en. Sec. 594, p. 157, Cod. Stat. 1871; re-en. Sec. 524, p. 177, L. 1877; re-en. Sec. 524, 1st Div. Rev. Stat. 1879; re-en. Sec. 541, 1st Div. Comp. Stat. 1887; amd. Sec. 904, C. Civ. Proc. 1895; re-en. Sec. 6671, Rev. C. 1907; re-en. Sec. 9271, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 548; re-en. Sec. 9271, R.C.M. 1935; R.C.M. 1947, 93-4318.

27-18-803. Notice of application for order to sell. Application for the order shall be upon such notice to the adverse party or his attorney as the court or judge, considering the nature and condition of the property, may direct. If it shall appear to the court or judge that the delay necessary to give notice would cause a material depreciation in the value of property, the order may be made without notice.

History: En. Sec. 905, C. Civ. Proc. 1895; re-en. Sec. 6672, Rev. C. 1907; re-en. Sec. 9272, R.C.M. 1921; re-en. Sec. 9272, R.C.M. 1935; R.C.M. 1947, 93-4319.

27-18-804. Sale of property subject to a security interest — disposition of proceeds, security agreement. (1) When the property taken under 27-18-413 is sold under process, the officer levying the writ must apply the proceeds of the sale as follows:

(a) to the repayment of the sum paid to the secured party, with interest from the date of such payment; and

(b) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

(2) In the event the property is sold under attachment, such attaching creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Part 9

Judgment and Subsequent Procedure

27-18-901. Judgment when debt not yet due. (1) On the trial of any cause brought under the provisions of 27-18-203, judgment may be rendered on any such debt not due upon satisfactory proof to the court of the facts alleged in the affidavit for attachment, as provided in that section. Any such judgment shall be with a rebatement of the interest from the time said judgment is rendered until the time at which said debt shall have become due.

(2) The defendant may, by plea, put in issue the matter alleged in the affidavit required in 27-18-203, and if the plaintiff fails to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate.

History: En. Sec. 1, p. 141, L. 1899; re-en. Sec. 6658, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1911; re-en. Sec. 9258, R.C.M. 1921; re-en. Sec. 9258, R.C.M. 1935; R.C.M. 1947, 93-4303(part).

Cross-References

Demurrers, pleas, etc., abolished, Rule 7(c), M.R.Civ.P. (see Title 25, ch. 20).

27-18-902. Procedure when defendant recovers judgment. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all of the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands must be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

History: En. Sec. 106, p. 64, Bannack Stat.; re-en. Sec. 135, p. 159, L. 1867; re-en. Sec. 153, p. 58, Cod. Stat. 1871; re-en. Sec. 195, p. 88, L. 1877; re-en. Sec. 195, 1st Div. Rev. Stat. 1879; re-en. Sec. 197, 1st Div. Comp. Stat. 1887; re-en. Sec. 911, C. Civ. Proc. 1895; re-en. Sec. 6678, Rev. C. 1907; re-en. Sec. 9279, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 553; re-en. Sec. 9279, R.C.M. 1935; R.C.M. 1947, 93-4326.

27-18-903. Judgment for plaintiff — disposition of attached property and proceeds of sales. If judgment be recovered by plaintiff, the sheriff must satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

(1) by paying to the plaintiff the proceeds of all sales of perishable property or property ordered by the court or judge to be sold by him, or of any debts or credits collected by him, or so much thereof as shall be necessary to satisfy the judgment;

(2) if any balance remain due and an execution shall have been issued on the judgment, by selling under the execution so much of the property, real or

personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given and the sales conducted as in other cases of sales on execution.

History: En. Sec. 103, p. 64, Bannack Stat.; re-en. Sec. 132, p. 159, L. 1867; re-en. Sec. 150, p. 58, Cod. Stat. 1871; re-en. Sec. 192, p. 87, L. 1877; re-en. Sec. 192, 1st Div. Rev. Stat. 1879; re-en. Sec. 194, 1st Div. Comp. Stat. 1887; re-en. Sec. 908, C. Civ. Proc. 1895; re-en. Sec. 6675, Rev. C. 1907; re-en. Sec. 9276, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 550; re-en. Sec. 9276, R.C.M. 1935; R.C.M. 1947, 93-4323.

27-18-904. Delivery of excess property and proceeds to defendant. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands and any proceeds of property attached unapplied on the judgment.

History: En. Sec. 104, p. 64, Bannack Stat.; re-en. Sec. 133, p. 159, L. 1867; re-en. Sec. 151, p. 58, Cod. Stat. 1871; re-en. Sec. 193, p. 87, L. 1877; re-en. Sec. 193, 1st Div. Rev. Stat. 1879; re-en. Sec. 195, 1st Div. Comp. Stat. 1887; re-en. Sec. 909, C. Civ. Proc. 1895; re-en. Sec. 6676, Rev. C. 1907; re-en. Sec. 9277, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 551; re-en. Sec. 9277, R.C.M. 1935; R.C.M. 1947, 93-4324(part).

27-18-905. Execution of balance due on judgment. If, after selling all property attached by him remaining in his hands and applying the proceeds, together with the proceeds of any debt or credit collected by him, deducting his fee, to the payment of the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon an execution in other cases.

History: En. Sec. 104, p. 64, Bannack Stat.; re-en. Sec. 133, p. 159, L. 1867; re-en. Sec. 151, p. 58, Cod. Stat. 1871; re-en. Sec. 193, p. 87, L. 1877; re-en. Sec. 193, 1st Div. Rev. Stat. 1879; re-en. Sec. 195, 1st Div. Comp. Stat. 1887; re-en. Sec. 909, C. Civ. Proc. 1895; re-en. Sec. 6676, Rev. C. 1907; re-en. Sec. 9277, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 551; re-en. Sec. 9277, R.C.M. 1935; R.C.M. 1947, 93-4324(part).

27-18-906. Procedure when execution returned unsatisfied. If the execution is returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to 27-18-301 or 27-18-722 or he may proceed, as in other cases, upon the return of an execution.

History: En. Sec. 105, p. 64, Bannack Stat.; re-en. Sec. 134, p. 159, L. 1867; re-en. Sec. 152, p. 58, Cod. Stat. 1871; re-en. Sec. 194, p. 88, L. 1877; re-en. Sec. 194, 1st Div. Rev. Stat. 1879; re-en. Sec. 196, 1st Div. Comp. Stat. 1887; re-en. Sec. 910, C. Civ. Proc. 1895; re-en. Sec. 6677, Rev. C. 1907; re-en. Sec. 9278, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 552; re-en. Sec. 9278, R.C.M. 1935; R.C.M. 1947, 93-4325.

Parts 10 through 14 reserved

Part 15

Attachment in Justice's Court

27-18-1501. Justice's authority to issue writ. A writ to attach the property of the defendant may be issued by the justice at the time of or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in 27-18-202.

History: En. Sec. 568, p. 155, Bannack Stat.; re-en. Sec. 674, p. 172, Cod. Stat. 1871; re-en. Sec. 734, 1st Div. Rev. Stat. 1879; re-en. Sec. 754, 1st Div. Comp. Stat. 1887; amd. Sec. 1560, C. Civ. Proc. 1895; re-en. Sec. 7026, Rev. C. 1907; re-en. Sec. 9659, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 866; re-en. Sec. 9659, R.C.M. 1935; amd. Sec. 6, Ch. 299, L. 1977; R.C.M. 1947, 93-6908.

27-18-1502. Plaintiff's undertaking. Before issuing the writ, the justice must require a written undertaking in due form on the part of the plaintiff, with two or more sureties, in a sum of not less than $50 or more than $300, to the effect that if defendant recover judgment, the plaintiff will pay all costs that may be awarded to defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

History: En. Sec. 569, p. 155, Bannack Stat.; re-en. Sec. 675, p. 172, Cod. Stat. 1871; re-en. Sec. 735, 1st Div. Rev. Stat. 1879; re-en. Sec. 755, 1st Div. Comp. Stat. 1887; amd. Sec. 1561, C. Civ. Proc. 1895; re-en. Sec. 7027, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1911; re-en. Sec. 9660, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 867; re-en. Sec. 9660, R.C.M. 1935; R.C.M. 1947, 93-6909(part).

27-18-1503. Exception to sureties — justification. Within 2 days after or at any time before the service of the writ of attachment upon defendant, he may except to the sufficiency of the sureties, and if he fails to do so, he is deemed to have waived all objections to them. When excepted to, the sureties must, within 3 days after notice by the defendant of not less than 1 day, justify before the justice, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the justice shall make an order vacating the writ of attachment.

History: En. Sec. 569, p. 155, Bannack Stat.; re-en. Sec. 675, p. 172, Cod. Stat. 1871; re-en. Sec. 735, 1st Div. Rev. Stat. 1879; re-en. Sec. 755, 1st Div. Comp. Stat. 1887; amd. Sec. 1561, C. Civ. Proc. 1895; re-en. Sec. 7027, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1911; re-en. Sec. 9660, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 867; re-en. Sec. 9660, R.C.M. 1935; R.C.M. 1947, 93-6909(part).

27-18-1504. Form and content of writ — defendant's undertaking to prevent levy. (1) The writ may be directed to the sheriff or any constable of the county or the sheriff of any other county and must require him to:

(a) attach and safely keep all the property of the defendant in his county, not exempt from attachment, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives him security by the undertaking of two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, take such undertaking.

(2) The undertaking must be to the plaintiff and must be approved in writing on the back thereof by the plaintiff or his attorney or, upon their refusal, by the justice issuing the writ.

History: En. Sec. 570, p. 155, Bannack Stat.; re-en. Sec. 676, p. 172, Cod. Stat. 1871; re-en. Sec. 736, 1st Div. Rev. Stat. 1879; re-en. Sec. 756, 1st Div. Comp. Stat. 1887; re-en. Sec. 1562, C. Civ. Proc. 1895; amd. Sec. 2, p. 141, L. 1899; re-en. Sec. 7028, Rev. C. 1907; re-en. Sec. 9661, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 868; re-en. Sec. 9661, R.C.M. 1935; R.C.M. 1947, 93-6910; amd. Sec. 44, Ch. 12, L. 1979.

27-18-1505. Security for sheriff's costs. If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of attachment shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

History: **En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part).**

27-18-1506. Applicability of procedure in district court. Part 1; 27-18-207, 27-18-303 through 27-18-308; parts 4, 5, and 6; 27-18-711 through 27-18-713, 27-18-721 through 27-18-732; and parts 8 and 9, except 27-18-901, are applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff" whenever the writ is directed to a constable, and the word "justice" substituted for "judge".

History: **En. Sec. 571, p. 155, Bannack Stat.; re-en. Sec. 677, p. 172, Cod. Stat. 1871; re-en. Sec. 737, 1st Div. Rev. Stat. 1879; re-en. Sec. 757, 1st Div. Comp. Stat. 1887; re-en. Sec. 1563, C. Civ. Proc. 1895; re-en. Sec. 7029, Rev. C. 1907; re-en. Sec. 9662, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 869; re-en. Sec. 9662, R.C.M. 1935; R.C.M. 1947, 93-6911; amd. Sec. 45, Ch. 12, L. 1979.**

CHAPTER 19

INJUNCTIONS

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Chapter Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

Injunctive relief against unlawful termination or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

Part 1

General Provisions

27-19-101. Definition of injunction — by whom granted. An injunction is an order requiring a person to refrain from a particular act. The order may be granted by the court in which the action is brought or by a judge thereof and, when made by a judge, be enforced as the order of the court.

History: En. Sec. 82, p. 58, Bannack Stat.; amd. Sec. 111, p. 154, L. 1867; re-en. Sec. 128, p. 52, Cod. Stat. 1871; re-en. Sec. 170, p. 79, L. 1877; re-en. Sec. 170, 1st Div. Rev. Stat. 1879; re-en. Sec. 172, 1st Div. Comp. Stat. 1887; amd. Sec. 870, C. Civ. Proc. 1895; re-en. Sec. 6642, Rev. C. 1907; re-en. Sec. 9240, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 525; re-en. Sec. 9240, R.C.M. 1935; R.C.M. 1947, 93-4201.

27-19-102. When final injunction may be granted to prevent breach of obligation. Except where otherwise provided by the provisions of the code governing specific and preventive relief (chapter 1, part 4, of this title and Title 28, chapter 2, parts 16 and 17), a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant where:

(1) pecuniary compensation would not afford adequate relief;

(2) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

(3) the restraint is necessary to prevent a multiplicity of judicial proceedings; or

(4) the obligation arises from a trust.

History: En. Sec. 4462, Civ. C. 1895; re-en. Sec. 6120, Rev. C. 1907; re-en. Sec. 9241, R.C.M. 1921; Cal. Civ. C. Sec. 3422; Field Civ. C. Sec. 1911; re-en. Sec. 9241, R.C.M. 1935; R.C.M. 1947, 93-4202.

27-19-103. When injunction may not be granted. An injunction cannot be granted:

(1) to stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;

(2) to stay proceedings in a court of the United States;

(3) to stay proceedings in another state upon a judgment of a court of that state;

(4) to prevent the execution of a public statute by officers of the law for the public benefit;

(5) to prevent the breach of a contract the performance of which would not be specifically enforced;

(6) to prevent the exercise of a public or private office, in a lawful manner, by the person in possession;

(7) to prevent a legislative act by a municipal corporation;

(8) in labor disputes under any other or different circumstances or conditions than if the controversy were of another or different character or between parties neither or none of whom were laborers or interested in labor questions.

History: En. Sec. 4463, Civ. C. 1895; re-en. Sec. 6121, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1913; re-en. Sec. 9242, R.C.M. 1921; Cal. Civ. C. Sec. 3423; Based on Field Civ. C. Sec. 1912; re-en. Sec. 9242, R.C.M. 1935; R.C.M. 1947, 93-4203.

27-19-104. Contents of complaint — action for injunction by an association. Whenever an action for injunctive relief is initiated by a citizens' group or other public interest association and it appears by the complaint that there is an injury to a property or civil right of individual members of the association, which injury is distinguishable from an injury to the public generally, the names and addresses of injured members and a statement of the injury shall be provided in the complaint. An injunction may not be granted unless such information is provided in the complaint.

History: En. 93-4204.1 by Sec. 1, Ch. 170, L. 1977; R.C.M. 1947, 93-4204.1.

27-19-105. Form and scope of injunction or restraining order. An order granting an injunction or a restraining order shall:

(1) set forth the reasons for its issuance;

(2) be specific in its terms;

(3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and

(4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

History: En. Sec. 6, Ch. 399, L. 1979.

Part 2

Availability of Preliminary Injunction

27-19-201. When preliminary injunction may be granted. An injunction order may be granted in the following cases:

(1) when it shall appear that the applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it shall appear that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it shall appear during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears the applicant has suffered or may suffer physical abuse under the provisions of 40-4-121.

History: En. Sec. 83, p. 58, Bannack Stat.; re-en. Sec. 112, p. 154, L. 1867; re-en. Sec. 129, p. 52, Cod. Stat. 1871; re-en. Sec. 171, p. 79, L. 1877; re-en. Sec. 171, 1st Div. Rev. Stat. 1879; re-en. Sec. 173, 1st Div. Comp. Stat. 1887; amd. Sec. 871, C. Civ. Proc. 1895; re-en. Sec. 6643, Rev. C. 1907; re-en. Sec. 9243, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 526; re-en. Sec. 9243, R.C.M. 1935; R.C.M. 1947, 93-4204; amd. Sec. 1, Ch. 399, L. 1979; amd. Sec. 2, Ch. 180, L. 1981; amd. Sec. 1, Ch. 526, L. 1985.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Violation of protective order a misdemeanor, 45-5-626.

Montana Hazardous Waste Act — injunction for compliance with orders, permits, or rules, 75-10-414.

27-19-202. Preliminary injunction pending action for restraint of trade. Whenever any action, either civil or criminal, shall have been instituted in court in this state against any person for price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people, the court in which such action is pending is authorized to issue an injunction to restrain any such person from doing business in this state pending the final determination of said action so instituted.

History: En. Sec. 1, Ch. 93, L. 1905; re-en. Sec. 6654, Rev. C. 1907; re-en. Sec. 9254, R.C.M. 1921; re-en. Sec. 9254, R.C.M. 1935; amd. Sec. 56, Ch. 100, L. 1973; amd. Sec. 3, Ch. 138, L. 1975; R.C.M. 1947, 93-4215(1).

Cross-References

Unfair trade practices — injunction, 30-14-222.

27-19-203. Preliminary injunction pending action by public service commission. When the public service commission is conducting an adjudicatory proceeding or formal investigation relating to continuation or interruption of service upon the motion of the consumer counsel or the interested person or his legal representative, a district court may, upon the application of the consumer counsel or the interested person or his legal representative, enter a restraining order against any person respondent in the adjudicatory proceeding or investigation. Such a restraining order may prohibit the respondent and his agents, employees, licensees, and assignees from acting in the manner complained of in the proceeding before the commission until the commission has rendered its decision in the matter. The restraining order may include an order to show cause why the order should not become an injunction for the duration of the proceeding before the commission.

History: En. Sec. 1, Ch. 93, L. 1905; re-en. Sec. 6654, Rev. C. 1907; re-en. Sec. 9254, R.C.M. 1921; re-en. Sec. 9254, R.C.M. 1935; amd. Sec. 56, Ch. 100, L. 1973; amd. Sec. 3, Ch. 138, L. 1975; R.C.M. 1947, 93-4215(2).

27-19-204. Issuance without bond. The injunction provided for in 27-19-202 shall issue without bond, upon the application of the county attorney of the county in which the action is pending or upon the application of the attorney general in the name of the state of Montana, upon a prima facie showing that an action described in 27-19-202 has been instituted and is pending.

History: En. Sec. 2, Ch. 93, L. 1905; re-en. Sec. 6655, Rev. C. 1907; re-en. Sec. 9255, R.C.M. 1921; re-en. Sec. 9255, R.C.M. 1935; amd. Sec. 57, Ch. 100, L. 1973; R.C.M. 1947, 93-4216; amd. Sec. 46, Ch. 12, L. 1979.

Part 3

Procedure for Obtaining Preliminary Injunction

27-19-301. Notice of application — hearing. (1) No preliminary injunction may be issued without reasonable notice to the adverse party of the time and place of the making of the application therefor.

(2) Before granting an injunction order, the court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in 27-19-314.

History: (1)En. Sec. 85, p. 59, Bannack Stat.; re-en. Sec. 114, p. 154, L. 1867; re-en. Sec. 131, p. 52, Cod. Stat. 1871; re-en. Sec. 173, p. 79, L. 1877; re-en. Sec. 173, 1st Div. Rev. Stat. 1879; re-en. Sec. 175, 1st Div. Comp. Stat. 1887; en. Sec. 873, C. Civ. Proc. 1895; re-en. Sec. 6645, Rev. C. 1907; re-en. Sec. 9245, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 528; re-en. Sec. 9245, R.C.M. 1935; R.C.M. 1947, 93-4206(part); (2)En. Sec. 3, Ch. 399, L. 1979; amd. Sec. 2, Ch. 399, L. 1979.

27-19-302. Repealed. Sec. 18, Ch. 399, L. 1979.

History: En. Sec. 88, p. 59, Bannack Stat.; amd. Sec. 117, p. 155, L. 1867; re-en. Sec. 134, p. 53, Cod. Stat. 1871; re-en. Sec. 176, p. 81, L. 1877; re-en. Sec. 176, 1st Div. Rev. Stat. 1879; re-en. Sec. 178, 1st Div. Comp. Stat. 1887; amd. Sec. 881, C. Civ. Proc. 1895; re-en. Sec. 6653, Rev. C. 1907; re-en. Sec. 9253, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 531; re-en. Sec. 9253, R.C.M. 1935; R.C.M. 1947, 93-4214.

27-19-303. Time of granting injunction, evidence required. (1) The injunction order may be granted after the hearing at any time before judgment.

(2) Upon the hearing each party may present affidavits or oral testimony. An injunction order may not be granted on affidavits unless:

(a) they are duly verified; and

(b) the material allegations of the affidavits setting forth the grounds for the order are made positively and not upon information and belief.

(3) Upon the hearing of a contested application for an injunction order, a verified answer has the effect only of an affidavit.

History: (1), (2)En. Sec. 84, p. 58, Bannack Stat.; re-en. Sec. 113, p. 154, L. 1867; re-en. Sec. 130, p. 52, Cod. Stat. 1871; re-en. Sec. 172, p. 79, L. 1877; re-en. Sec. 172, 1st Div. Rev. Stat. 1879; re-en. Sec. 174, 1st Div. Comp. Stat. 1887; amd. Sec. 872, C. Civ. Proc. 1895; re-en. Sec. 6644, Rev. C. 1907; re-en. Sec. 9244, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 527; re-en. Sec. 9244, R.C.M. 1935; Sec. 93-4205, R.C.M. 1947; (3)En. Sec. 877, C. Civ. Proc. 1895; re-en. Sec. 6649, Rev. C. 1907; re-en. Sec. 9249, R.C.M. 1921; re-en. Sec. 9249, R.C.M. 1935; Sec. 93-4210, R.C.M. 1947; R.C.M. 1947, 93-4205(part), 93-4210(part); amd. Sec. 47, Ch. 12, L. 1979; amd. Sec. 4, Ch. 399, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

27-19-304. Repealed. Sec. 18, Ch. 399, L. 1979.

History: En. Sec. 84, p. 58, Bannack Stat.; re-en. Sec. 113, p. 154, L. 1867; re-en. Sec. 130, p. 52, Cod. Stat. 1871; re-en. Sec. 172, p. 79, L. 1877; re-en. Sec. 172, 1st Div. Rev. Stat. 1879; re-en. Sec. 174, 1st Div. Comp. Stat. 1887; amd. Sec. 872, C. Civ. Proc. 1895; re-en. Sec. 6644, Rev. C. 1907; re-en. Sec. 9244, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 527; re-en. Sec. 9244, R.C.M. 1935; R.C.M. 1947, 93-4205(part).

27-19-305. Renumbered 27-19-314 by Code Commissioner, 1979.

27-19-306. Security for damages. (1) On granting an injunction or restraining order, the court or judge shall require a written undertaking to be given by the applicant, in such sum as the court considers proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. The undertaking may not be required in domestic disputes or when the state or a state agency, a county or subdivision thereof, or a municipal corporation is the party seeking the injunction or restraining order. In any case, the court in its discretion may waive the undertaking in the interest of justice.

(2) Within 5 days after the service of the injunction, the party enjoined may except to the sufficiency of the sureties. If he fails to do so, he waives all objections to them. When excepted to, the applicant's sureties, upon notice to the party enjoined of not less than 2 or more than 5 days, must justify before a judge or clerk in the same manner as upon bail on arrest. If they fail to justify or if others in their place fail to justify at the time and place appointed, the order granting the injunction must be dissolved.

History: En. Sec. 86, p. 59, Bannack Stat.; re-en. Sec. 115, p. 154, L. 1867; re-en. Sec. 132, p. 52, Cod. Stat. 1871; re-en. Sec. 174, p. 79, L. 1877; re-en. Sec. 174, 1st Div. Rev. Stat. 1879; re-en. Sec. 176, 1st Div. Comp. Stat. 1887; en. Sec. 874, C. Civ. Proc. 1895; re-en. Sec. 6646, Rev. C. 1907; re-en. Sec. 9246, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 529; re-en. Sec. 9246, R.C.M. 1935; amd. Sec. 53, Ch. 535, L. 1975; R.C.M. 1947, 93-4207; amd. Sec. 48, Ch. 12, L. 1979; amd. Sec. 8, Ch. 399, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

27-19-307. New undertaking for security following hearing. On a hearing to show cause, the court or judge may require a new undertaking, in the same or a different sum, to be given by the party who obtained the order, with like sureties and to the like effect as upon granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer.

History: En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 13, Ch. 399, L. 1979; MCA 1979, 27-19-313; redes. 27-19-307 by Code Commissioner, 1979.

27-19-308 through 27-19-310 reserved.

27-19-311. Repealed. Sec. 18, Ch. 399, L. 1979.

History: En. Sec. 87, p. 59, Bannack Stat.; re-en. Sec. 116, p. 155, L. 1867; re-en. Sec. 133, p. 52, Cod. Stat. 1871; re-en. Sec. 175, p. 81, L. 1877; re-en. Sec. 175, 1st Div. Rev. Stat. 1879; re-en. Sec. 177, 1st Div. Comp. Stat. 1887; amd. Sec. 875, C. Civ. Proc. 1895; re-en. Sec. 6647, Rev. C. 1907; re-en. Sec. 9247, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 530; re-en. Sec. 9247, R.C.M. 1935; R.C.M. 1947, 93-4208.

27-19-312. Renumbered 27-19-303(3) by Code Commissioner, 1979.

27-19-313. Renumbered 27-19-307 by Code Commissioner, 1979.

27-19-314. Temporary restraining order. Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the adverse party, until the hearing and decision of the application, by an order which is called a temporary restraining order.

History: En. Sec. 85, p. 59, Bannack Stat.; re-en. Sec. 114, p. 154, L. 1867; re-en. Sec. 131, p. 52, Cod. Stat. 1871; re-en. Sec. 173, p. 79, L. 1877; re-en. Sec. 173, 1st Div. Rev. Stat. 1879; re-en. Sec. 175, 1st Div. Comp. Stat. 1887; en. Sec. 873, C. Civ. Proc. 1895; re-en. Sec. 6645, Rev. C. 1907; re-en. Sec. 9245, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 528; re-en. Sec. 9245, R.C.M. 1935; R.C.M. 1947, 93-4206(part); amd. Sec. 5, Ch. 399, L. 1979; Sec. 27-19-305, MCA 1979; redes. 27-19-314 by Code Commissioner, 1979.

27-19-315. When restraining order may be granted without notice. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or his attorney could be heard in opposition; and

(2) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

History: En. Sec. 7, Ch. 399, L. 1979; amd. Sec. 2, Ch. 526, L. 1985.

Cross-References

Stay of government agency decision pending court review, 2-4-702.

Violation of protective order a misdemeanor, 45-5-626.

27-19-316. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why such injury is irreparable and why the order was granted without notice; and

(4) except as provided in 40-4-121, expire by its terms within such time after entry, not to exceed 10 days, as the court or judge fixes.

History: En. Sec. 9, Ch. 399, L. 1979; amd. Sec. 3, Ch. 526, L. 1985.

Cross-References

Stay of government agency decision pending court review, 2-4-702.

27-19-317. Extension of expiration date. The time fixed in the order for its expiration may be extended, for good cause shown, for a like period or, if the party against whom the order is directed consents, for a longer period. The reasons for the extension must be entered in the record.

History: En. Sec. 10, Ch. 399, L. 1979.

Cross-References

Stay of government agency decision pending court review, 2-4-702.

27-19-318. Application for injunction to be heard without delay. Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if he does not do so, the court or judge shall dissolve the temporary restraining order.

History: En. Sec. 11, Ch. 399, L. 1979.

27-19-319. Motion to dissolve or modify restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice as the court or judge may prescribe, the adverse party may appear and move that the order be dissolved or modified. The court shall hear and determine such motion as expeditiously as the ends of justice require.

History: En. Sec. 12, Ch. 399, L. 1979.

Part 4

Dissolution or Modification of Preliminary Injunction

27-19-401. Application to dissolve or modify injunction. The party enjoined may apply to the judge who granted the injunction order or to the court in which the action is brought to dissolve or modify the same. The application may be made upon reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad.

History: En. Sec. 89, p. 59, Bannack Stat.; re-en. Sec. 118, p. 155, L. 1867; re-en. Sec. 135, p. 53, Cod. Stat. 1871; re-en. Sec. 177, p. 81, L. 1877; re-en. Sec. 177, 1st Div. Rev. Stat. 1879; re-en. Sec. 179, 1st Div. Comp. Stat. 1887; amd. Sec. 878, C. Civ. Proc. 1895; re-en. Sec. 6650, Rev. C. 1907; re-en. Sec. 9250, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 532; re-en. Sec. 9250, R.C.M. 1935; R.C.M. 1947, 93-4211(part); amd. Sec. 14, Ch. 399, L. 1979.

27-19-402. Repealed. Sec. 18, Ch. 399, L. 1979.

History: Ap. p. Sec. 877, C. Civ. Proc. 1895; re-en. Sec. 6649, Rev. C. 1907; re-en. Sec. 9249, R.C.M. 1921; re-en. Sec. 9249, R.C.M. 1935; Sec. 93-4210, R.C.M. 1947; Ap. p. Sec. 89,

p. 59, Bannack Stat.; re-en. Sec. 118, p. 155, L. 1867; re-en. Sec. 135, p. 53, Cod. Stat. 1871; re-en. Sec. 177, p. 81, L. 1877; re-en. Sec. 177, 1st Div. Rev. Stat. 1879; re-en. Sec. 179, 1st Div. Comp. Stat. 1887; amd. Sec. 878, C. Civ. Proc. 1895; re-en. Sec. 6650, Rev. C. 1907; re-en. Sec. 9250, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 532; re-en. Sec. 9250, R.C.M. 1935; Sec. 93-4211, R.C.M. 1947; R.C.M. 1947, 93-4210(part), 93-4211(part); amd. Sec. 49, Ch. 12, L. 1979.

27-19-403. New undertaking for security following hearing. Upon the hearing, the court or judge may require a new undertaking, in the same or a different sum, to be given by the party who obtained the order, with like sureties and to the like effect as the undertaking executed upon the granting of the original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the granting of the original order. The persons who executed the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer.

History: En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 50, Ch. 12, L. 1979; amd. Sec. 15, Ch. 399, L. 1979.

27-19-404. When injunction dissolved or modified. If upon the hearing it satisfactorily appears that there are not sufficient grounds for the injunction order, the order must be dissolved; or if it satisfactorily appears that the extent of the injunction order is too great, the order must be modified.

History: Ap. p. Sec. 90, p. 60, Bannack Stat.; re-en. Sec. 119, p. 155, L. 1867; re-en. Sec. 136, p. 53, Cod. Stat. 1871; re-en. Sec. 178, p. 81, L. 1877; re-en. Sec. 178, 1st Div. Rev. Stat. 1879; re-en. Sec. 180, 1st Div. Comp. Stat. 1887; re-en. Sec. 879, C. Civ. Proc. 1895; re-en. Sec. 6651, Rev. C. 1907; re-en. Sec. 9251, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 533; re-en. Sec. 9251, R.C.M. 1935; Sec. 93-4212, R.C.M. 1947; Ap. p. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part), 93-4212; amd. Sec. 51, Ch. 12, L. 1979.

27-19-405. Enjoined party's undertaking for security upon dissolution. If the injunction order is dissolved because the alleged injury is not irreparable and is capable of being adequately compensated for in money, the court or judge shall require the enjoined party to execute an undertaking in such form and amount and with such sureties as the court or judge may direct, conditioned to indemnify the party who obtained the injunction order against loss sustained by reason of the dissolution.

History: En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 52, Ch. 12, L. 1979; amd. Sec. 16, Ch. 399, L. 1979.

27-19-406. Costs upon dissolution. Where an injunction order is granted and the same is afterward dissolved upon application of the party enjoined thereby, the court or judge to whom the application to dissolve is made may award as costs of the application, against the party who obtained the injunction and in favor of the party applying, such sum as to the court or judge may appear just, not less than $10 or more than $100.

History: En. Sec. 880, C. Civ. Proc. 1895; re-en. Sec. 6652, Rev. C. 1907; re-en. Sec. 9252, R.C.M. 1921; re-en. Sec. 9252, R.C.M. 1935; R.C.M. 1947, 93-4213; amd. Sec. 17, Ch. 399, L. 1979.

Cross-References

When costs allowed, of course, to plaintiff, 25-10-101.

CHAPTER 20

RECEIVERS

Part 1 — General Provisions

27-20-101. Definition of property.
27-20-102. When and by whom receiver appointed.
27-20-103. Appointment of receiver upon dissolution of corporation.

Part 2 — Appointment Procedure

27-20-201. Notice of application for appointment before judgment.
27-20-202. Interested persons not to be appointed without consent.
27-20-203. Security to cover damages caused by appointment upon ex parte application.

Part 3 — Action by Receivers—Removal

27-20-301. Oath and undertaking to faithfully discharge duties.
27-20-302. Powers of receiver.
27-20-303. Investment of funds.
27-20-304. Removal of receiver.

Chapter Cross-References

Proceedings in aid of execution — appointment of a receiver, Title 25, ch. 14, part 2.

Part 1

General Provisions

27-20-101. Definition of property. The word "property", used in this chapter, includes the rents, profits, or other income and the increase of real or personal property.

History: En. Sec. 951, C. Civ. Proc. 1895; re-en. Sec. 6699, Rev. C. 1907; re-en. Sec. 9302, R.C.M. 1921; re-en. Sec. 9302, R.C.M. 1935; R.C.M. 1947, 93-4402(part).

27-20-102. When and by whom receiver appointed. A receiver may be appointed by the court in which an action is pending or by the judge thereof:

(1) in an action by a vendor to vacate a fraudulent purchase of property, by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(2) in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;

(3) after judgment, to carry the judgment into effect;

(4) after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal; or in proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

(5) in all other cases where, before February 1, 1864, receivers have been appointed by the usages of courts of equity.

History: En. Sec. 116, p. 67, Bannack Stat.; re-en. Sec. 143, p. 160, L. 1867; re-en. Sec. 179, p. 62, Cod. Stat. 1871; en. Sec. 221, p. 93, L. 1877; re-en. Sec. 221, 1st Div. Rev. Stat. 1879; re-en. Sec. 229, 1st Div. Comp. Stat. 1887; re-en. Sec. 950, C. Civ. Proc. 1895; re-en. Sec. 6698, Rev. C. 1907; re-en. Sec. 9301, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 564; re-en. Sec. 9301, R.C.M. 1935; amd. Sec. 142, Ch. 300, L. 1967; R.C.M. 1947, 93-4401.

Cross-References

Proceedings in foreclosure suits, 71-1-222.

27-20-103. Appointment of receiver upon dissolution of corporation. Upon the dissolution of any corporation, the district court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, to collect the debts and property due and belonging to the corporation, to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

History: En. Sec. 222, p. 94, L. 1877; re-en. Sec. 222, 1st Div. Rev. Stat. 1879; re-en. Sec. 230, 1st Div. Comp. Stat. 1887; re-en. Sec. 952, C. Civ. Proc. 1895; re-en. Sec. 6700, Rev. C. 1907; re-en. Sec. 9303, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 565; re-en. Sec. 9303, R.C.M. 1935; R.C.M. 1947, 93-4403.

Cross-References

Dissolution and liquidation, Title 35, ch. 1, part 9.

Part 2

Appointment Procedure

27-20-201. Notice of application for appointment before judgment. Notice of an application for the appointment of a receiver in an action before judgment therein must be given to the adverse party unless he has failed to appear in the action and the time limited for his appearance has expired or unless it shall appear to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court or lost, materially injured, destroyed, or unlawfully disposed of.

History: En. Sec. 951, C. Civ. Proc. 1895; re-en. Sec. 6699, Rev. C. 1907; re-en. Sec. 9302, R.C.M. 1921; re-en. Sec. 9302, R.C.M. 1935; R.C.M. 1947, 93-4402(part).

27-20-202. Interested persons not to be appointed without consent. No party, attorney, or person interested in an action can be appointed receiver therein without the written consent of the parties, filed with the clerk.

History: En. Sec. 223, p. 94, L. 1877; re-en. Sec. 223, 1st Div. Rev. Stat. 1879; re-en. Sec. 231, 1st Div. Comp. Stat. 1887; re-en. Sec. 953, C. Civ. Proc. 1895; re-en. Sec. 6701,

Rev. C. 1907; re-en. Sec. 9304, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 566; re-en. Sec. 9304, R.C.M. 1935; R.C.M. 1947, 93-4404(part).

27-20-203. Security to cover damages caused by appointment upon ex parte application. If a receiver be appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

History: En. Sec. 223, p. 94, L. 1877; re-en. Sec. 223, 1st Div. Rev. Stat. 1879; re-en. Sec. 231, 1st Div. Comp. Stat. 1887; re-en. Sec. 953, C. Civ. Proc. 1895; re-en. Sec. 6701, Rev. C. 1907; re-en. Sec. 9304, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 566; re-en. Sec. 9304, R.C.M. 1935; R.C.M. 1947, 93-4404(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Part 3

Action by Receivers — Removal

27-20-301. Oath and undertaking to faithfully discharge duties. Before entering upon his duties, the receiver must be sworn to perform them faithfully and shall execute an undertaking, with one or more sureties approved by the court or judge, to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein. The court may at any time direct him to give new bonds with new sureties with the like effect.

History: En. Sec. 224, p. 94, L. 1877; re-en. Sec. 224, 1st Div. Rev. Stat. 1879; re-en. Sec. 232, 1st Div. Comp. Stat. 1887; re-en. Sec. 954, C. Civ. Proc. 1895; re-en. Sec. 6702, Rev. C. 1907; re-en. Sec. 9305, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 567; re-en. Sec. 9305, R.C.M. 1935; R.C.M. 1947, 93-4405(part); amd. Sec. 53, Ch. 12, L. 1979.

Cross-References

Appointment of a receiver — oath and undertaking, 25-14-202.

27-20-302. Powers of receiver. The receiver has, under the control of the court, power to:

(1) bring and defend actions in his own name, as receiver;

(2) take and keep possession of the property;

(3) receive rents, collect debts, and compound for and compromise the same;

(4) make transfers; and

(5) generally do such acts respecting the property as the court may authorize.

History: En. Sec. 225, p. 94, L. 1877; re-en. Sec. 225, 1st Div. Rev. Stat. 1879; re-en. Sec. 233, 1st Div. Comp. Stat. 1887; re-en. Sec. 955, C. Civ. Proc. 1895; re-en. Sec. 6703,

Rev. C. 1907; re-en. Sec. 9306, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 568; re-en. Sec. 9306, R.C.M. 1935; R.C.M. 1947, 93-4406.

Cross-References

Powers of receiver, 30-14-132.

27-20-303. Investment of funds. Funds in the hands of a receiver may be invested upon interest, by order of the court, but no such order can be made except upon the consent of all the parties to the action.

History: En. Sec. 226, p. 94, L. 1877; re-en. Sec. 226, 1st Div. Rev. Stat. 1879; re-en. Sec. 234, 1st Div. Comp. Stat. 1887; re-en. Sec. 956, C. Civ. Proc. 1895; re-en. Sec. 6704, Rev. C. 1907; re-en. Sec. 9307, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 569; re-en. Sec. 9307, R.C.M. 1935; R.C.M. 1947, 93-4407.

27-20-304. Removal of receiver. The court may at any time remove a receiver.

History: En. Sec. 224, p. 94, L. 1877; re-en. Sec. 224, 1st Div. Rev. Stat. 1879; re-en. Sec. 232, 1st Div. Comp. Stat. 1887; re-en. Sec. 954, C. Civ. Proc. 1895; re-en. Sec. 6702, Rev. C. 1907; re-en. Sec. 9305, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 567; re-en. Sec. 9305, R.C.M. 1935; R.C.M. 1947, 93-4405(part).

CHAPTERS 21 THROUGH 24

RESERVED

CHAPTER 25

CERTIORARI — WRIT OF REVIEW

Part 1 — General Provisions

27-25-101. Name of writ.
27-25-102. When and by whom granted.
27-25-103. Application of rules of procedure.

Part 2 — Procedure for Obtaining and Serving Writ

27-25-201. Application for writ — notice.
27-25-202. Contents of writ.
27-25-203. Stay of proceedings.
27-25-204. Service of writ.
27-25-205. To whom writ directed — return.

Part 3 — Procedure Upon Return of Writ

27-25-301. Time for return and hearing.
27-25-302. Correction of defective return.
27-25-303. Scope of review upon writ.
27-25-304. Hearing and judgment.
27-25-305. Copy of judgment to inferior tribunal or officer.

Part 1

General Provisions

27-25-101. Name of writ. The writ of certiorari may be denominated the writ of review.

History: En. Sec. 371, p. 121, Bannack Stat.; re-en. Sec. 430, p. 222, L. 1867; re-en. Sec. 506, p. 139, Cod. Stat. 1871; re-en. Sec. 536, p. 179, L. 1877; re-en. Sec. 536, 1st Div. Rev. Stat. 1879; re-en. Sec. 554, 1st Div. Comp. Stat. 1887; re-en. Sec. 1940, C. Civ. Proc. 1895; re-en. Sec. 7202, Rev. C. 1907; re-en. Sec. 9836, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1067; re-en. Sec. 9836, R.C.M. 1935; R.C.M. 1947, 93-9001.

Cross-References

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

27-25-102. When and by whom granted. A writ of review may be granted by:

(1) the supreme court and any justice of the supreme court, in proceedings for contempt in the district court; or

(2) the supreme court or the district court or any judge thereof, when an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction of such tribunal, board, or officer and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy.

History: En. Sec. 372, p. 121, Bannack Stat.; re-en. Sec. 431, p. 222, L. 1867; re-en. Sec. 507, p. 139, Cod. Stat. 1871; re-en. Sec. 537, p. 180, L. 1877; re-en. Sec. 537, 1st Div. Rev. Stat. 1879; re-en. Sec. 555, 1st Div. Comp. Stat. 1887; re-en. Sec. 1941, C. Civ. Proc. 1895; re-en. as amd. Sec. 7203, Rev. C. 1907; re-en. Sec. 9837, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1068; re-en. Sec. 9837, R.C.M. 1935; R.C.M. 1947, 93-9002.

Cross-References

Judgment and orders in contempt cases final, 3-1-523.

Powers of Justices individually — certiorari, 3-2-212.

Original jurisdiction — District Court, 3-5-302.

Powers of Judges at chambers, 3-5-311.

27-25-103. Application of rules of procedure. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

History: Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-3902, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9302(part), 93-9303(part); amd. Sec. 54, Ch. 12, L. 1979.

Cross-References

New trial, Title 25, ch. 11.

Appeal to Supreme Court, Title 25, ch. 12.

New trials — amendment of judgment, Rule 59, M.R.Civ.P. (see Title 25, ch. 20).

Appeal from a District Court to the Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Rules of Appellate Procedure, Title 25, ch. 21.

Part 2

Procedure for Obtaining and Serving Writ

27-25-201. Application for writ — notice. The application must be made on affidavit by the party beneficially interested; and the court may require a notice of the application to be given to the adverse party, grant an order to show cause why it should not be allowed, or grant the writ without notice.

History: En. Sec. 373, p. 121, Bannack Stat.; re-en. Sec. 432, p. 222, L. 1867; re-en. Sec. 508, p. 139, Cod. Stat. 1871; re-en. Sec. 538, p. 180, L. 1877; re-en. Sec. 538, 1st Div. Rev. Stat. 1879; re-en. Sec. 556, 1st Div. Comp. Stat. 1887; re-en. Sec. 1942, C. Civ. Proc. 1895; re-en. Sec. 7204, Rev. C. 1907; re-en. Sec. 9838, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1069; re-en. Sec. 9838, R.C.M. 1935; R.C.M. 1947, 93-9003.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

27-25-202. Contents of writ. The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and require the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

History: En. Sec. 375, p. 121, Bannack Stat.; re-en. Sec. 434, p. 222, L. 1867; re-en. Sec. 510, p. 139, Cod. Stat. 1871; re-en. Sec. 540, p. 180, L. 1877; re-en. Sec. 540, 1st Div. Rev. Stat. 1879; re-en. Sec. 558, 1st Div. Comp. Stat. 1887; re-en. Sec. 1944, C. Civ. Proc. 1895; re-en. Sec. 7206, Rev. C. 1907; re-en. Sec. 9840, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1071; re-en. Sec. 9840, R.C.M. 1935; R.C.M. 1947, 93-9005.

27-25-203. Stay of proceedings. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court or judge; but if omitted, the power of the inferior tribunal, board, or officer is not suspended or the proceedings stayed.

History: En. Sec. 376, p. 122, Bannack Stat.; re-en. Sec. 435, p. 223, L. 1867; re-en. Sec. 511, p. 140, Cod. Stat. 1871; re-en. Sec. 541, p. 180, L. 1877; re-en. Sec. 541, 1st Div. Rev. Stat. 1879; re-en. Sec. 559, 1st Div. Comp. Stat. 1887; re-en. Sec. 1945, C. Civ. Proc. 1895; re-en. Sec. 7207, Rev. C. 1907; re-en. Sec. 9841, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1072; re-en. Sec. 9841, R.C.M. 1935; R.C.M. 1947, 93-9006; amd. Sec. 132, Ch. 575, L. 1981.

27-25-204. Service of writ. The writ must be served in the manner as a summons in civil action, except when otherwise expressly directed by the court or judge.

History: En. Sec. 377, p. 122, Bannack Stat.; re-en. Sec. 436, p. 223, L. 1867; re-en. Sec. 512, p. 140, Cod. Stat. 1871; re-en. Sec. 542, p. 180, L. 1877; re-en. Sec. 542, 1st Div. Rev. Stat. 1879; re-en. Sec. 560, 1st Div. Comp. Stat. 1887; re-en. Sec. 1946, C. Civ. Proc. 1895; re-en. Sec. 7208, Rev. C. 1907; re-en. Sec. 9842, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1073; re-en. Sec. 9842, R.C.M. 1935; R.C.M. 1947, 93-9007.

27-25-205. To whom writ directed — return. The writ may be directed to the inferior tribunal, board, or officer or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, must return the writ with the transcript required.

History: En. Sec. 374, p. 121, Bannack Stat.; re-en. Sec. 433, p. 222, L. 1867; re-en. Sec. 509, p. 139, Cod. Stat. 1871; re-en. Sec. 539, p. 180, L. 1877; re-en. Sec. 539, 1st Div. Rev. Stat. 1879; re-en. Sec. 557, 1st Div. Comp. Stat. 1887; re-en. Sec. 1943, C. Civ. Proc. 1895; re-en. Sec. 7205, Rev. C. 1907; re-en. Sec. 9839, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1070; re-en. Sec. 9839, R.C.M. 1935; R.C.M. 1947, 93-9004.

Part 3

Procedure Upon Return of Writ

27-25-301. Time for return and hearing. Writs of review issued by the supreme court or by a district court or district judge may, in the discretion of the court issuing the writ, be made returnable and a hearing thereon be heard at any time.

History: En. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; R.C.M. 1947, 93-9301(part).

27-25-302. Correction of defective return. If the return of the writ be defective, the court or judge may order a further return to be made.

History: En. Sec. 379, p. 122, Bannack Stat.; re-en. Sec. 438, p. 223, L. 1867; re-en. Sec. 514, p. 140, Cod. Stat. 1871; re-en. Sec. 544, p. 181, L. 1877; re-en. Sec. 544, 1st Div. Rev. Stat. 1879; re-en. Sec. 562, 1st Div. Comp. Stat. 1887; re-en. Sec. 1948, C. Civ. Proc. 1895; re-en. Sec. 7210, Rev. C. 1907; re-en. Sec. 9844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1075; re-en. Sec. 9844, R.C.M. 1935; R.C.M. 1947, 93-9009(part).

27-25-303. Scope of review upon writ. The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

History: En. Sec. 378, p. 122, Bannack Stat.; re-en. Sec. 437, p. 223, L. 1867; re-en. Sec. 513, p. 140, Cod. Stat. 1871; re-en. Sec. 543, p. 181, L. 1877; re-en. Sec. 543, 1st Div. Rev. Stat. 1879; re-en. Sec. 561, 1st Div. Comp. Stat. 1887; re-en. Sec. 1947, C. Civ. Proc. 1895; re-en. Sec. 7209, Rev. C. 1907; re-en. Sec. 9843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1074; re-en. Sec. 9843, R.C.M. 1935; R.C.M. 1947, 93-9008.

27-25-304. Hearing and judgment. When a full return has been made, the court or judge must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming, annulling, or modifying the proceedings below.

History: En. Sec. 379, p. 122, Bannack Stat.; re-en. Sec. 438, p. 223, L. 1867; re-en. Sec. 514, p. 140, Cod. Stat. 1871; re-en. Sec. 544, p. 181, L. 1877; re-en. Sec. 544, 1st Div. Rev. Stat. 1879; re-en. Sec. 562, 1st Div. Comp. Stat. 1887; re-en. Sec. 1948, C. Civ. Proc. 1895; re-en. Sec. 7210, Rev. C. 1907; re-en. Sec. 9844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1075; re-en. Sec. 9844, R.C.M. 1935; R.C.M. 1947, 93-9009(part).

Cross-References

Judgment, Title 25, ch. 9.

Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

27-25-305. Copy of judgment to inferior tribunal or officer. A copy of the judgment, signed by the clerk, must be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified upon.

History: En. Sec. 380, p. 122, Bannack Stat.; re-en. Sec. 439, p. 223, L. 1867; re-en. Sec. 515, p. 140, Cod. Stat. 1871; re-en. Sec. 545, p. 181, L. 1877; re-en. Sec. 545, 1st Div. Rev. Stat. 1879; re-en. Sec. 563, 1st Div. Comp. Stat. 1887; re-en. Sec. 1949, C. Civ. Proc. 1895; re-en. Sec. 7211, Rev. C. 1907; re-en. Sec. 9845, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1076; re-en. Sec. 9845, R.C.M. 1935; R.C.M. 1947, 93-9010.

CHAPTER 26

MANDAMUS — WRIT OF MANDATE

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27-26-307. Procedure when there is no answer or no material issue of fact.

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27-26-401. Default not permitted.
27-26-402. Judgment for applicant.
27-26-403. Officers not to be personally liable.

Part 1

General Provisions

27-26-101. Name of writ. The writ of mandamus may be denominated a writ of mandate.

History: En. Sec. 382, p. 122, Bannack Stat.; re-en. Sec. 441, p. 224, L. 1867; re-en. Sec. 517, p. 141, Cod. Stat. 1871; re-en. Sec. 547, p. 181, L. 1877; re-en. Sec. 547, 1st Div. Rev. Stat. 1879; re-en. Sec. 565, 1st Div. Comp. Stat. 1887; re-en. Sec. 1960, C. Civ. Proc.

1895; re-en. Sec. 7213, Rev. C. 1907; re-en. Sec. 9847, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1084; re-en. Sec. 9847, R.C.M. 1935; R.C.M. 1947, 93-9101.

27-26-102. When and by whom issued. (1) It may be issued by the supreme court or the district court or any judge of the district court to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

(2) The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law.

History: (1)En. Sec. 383, p. 122, Bannack Stat.; amd. Sec. 442, p. 224, L. 1867; re-en. Sec. 518, p. 141, Cod. Stat. 1871; re-en. Sec. 548, p. 181, L. 1877; re-en. Sec. 548, 1st Div. Rev. Stat. 1879; re-en. Sec. 566, 1st Div. Comp. Stat. 1887; amd. Sec. 1961, C. Civ. Proc. 1895; re-en. Sec. 7214, Rev. C. 1907; re-en. Sec. 9848, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1085; re-en. Sec. 9848, R.C.M. 1935; Sec. 93-9102, R.C.M. 1947; (2)En. Sec. 384, p. 123, Bannack Stat.; re-en. Sec. 443, p. 224, L. 1867; re-en. Sec. 519, p. 141, Cod. Stat. 1871; re-en. Sec. 549, p. 181, L. 1877; re-en. Sec. 549, 1st Div. Rev. Stat. 1879; re-en. Sec. 567, 1st Div. Comp. Stat. 1887; amd. Sec. 1962, C. Civ. Proc. 1895; re-en. Sec. 7215, Rev. C. 1907; re-en. Sec. 9849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1086; re-en. Sec. 9849, R.C.M. 1935; Sec. 93-9103, R.C.M. 1947; R.C.M. 1947, 93-9102, 93-9103(part).

Cross-References

Original jurisdiction — Supreme Court, 3-2-202.

Original jurisdiction — District Court, 3-5-302.

District Court — powers of Judges at chambers, 3-5-311.

Mandamus to compel enforcement of metal mine reclamation law, 82-4-354.

27-26-103. Application of rules of procedure. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

History: Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-3902, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9302(part), 93-9303(part); amd. Sec. 55, Ch. 12, L. 1979.

Cross-References

New trial, Title 25, ch. 11.

Appeal to Supreme Court, Title 25, ch. 12.

New trials — amendment of judgment, Rule 59, M.R.Civ.P. (see Title 25, ch. 20).

Appeal from a District Court to the Supreme Court, Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

Rules of Appellate Procedure, Title 25, ch. 21.

Part 2

Procedure for Obtaining, Serving, and Enforcing Writ

27-26-201. Application for writ. The writ must be issued upon affidavit, on the application of the party beneficially interested.

History: En. Sec. 384, p. 123, Bannack Stat.; re-en. Sec. 443, p. 224, L. 1867; re-en. Sec. 519, p. 141, Cod. Stat. 1871; re-en. Sec. 549, p. 181, L. 1877; re-en. Sec. 549, 1st Div. Rev. Stat. 1879; re-en. Sec. 567, 1st Div. Comp. Stat. 1887; amd. Sec. 1962, C. Civ. Proc.

1895; re-en. Sec. 7215, Rev. C. 1907; re-en. Sec. 9849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1086; re-en. Sec. 9849, R.C.M. 1935; R.C.M. 1947, 93-9103(part).

Cross-References

Affidavits, Title 26, ch. 1, part 10.

27-26-202. Notice of application. The notice of the application, when given, must be at least 10 days or a shorter time, in the discretion of the court or judge.

History: En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).

27-26-203. Form and content of writ. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command such party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted and a return day inserted.

History: En. Sec. 385, p. 123, Bannack Stat.; re-en. Sec. 444, p. 224, L. 1867; re-en. Sec. 520, p. 141, Cod. Stat. 1871; re-en. Sec. 550, p. 181, L. 1877; re-en. Sec. 550, 1st Div. Rev. Stat. 1879; re-en. Sec. 568, 1st Div. Comp. Stat. 1887; amd. Sec. 1963, C. Civ. Proc. 1895; re-en. Sec. 7216, Rev. C. 1907; re-en. Sec. 9850, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1087; re-en. Sec. 9850, R.C.M. 1935; R.C.M. 1947, 93-9104.

27-26-204. Factors that determine whether writ peremptory or alternative. When an application to the court or judge is made without notice to the adverse party and the writ be allowed, the alternative must be first issued; but if the application be upon due notice and the writ be allowed, the peremptory may be issued in the first instance.

History: En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).

27-26-205. Service of writ. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court or judge. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

History: En. Sec. 394, p. 124, Bannack Stat.; re-en. Sec. 453, p. 225, L. 1867; re-en. Sec. 529, p. 143, Cod. Stat. 1871; en. Sec. 559, p. 183, L. 1877; re-en. Sec. 559, 1st Div. Rev. Stat. 1879; re-en. Sec. 577, 1st Div. Comp. Stat. 1887; re-en. Sec. 1972, C. Civ. Proc. 1895; re-en. Sec. 7225, Rev. C. 1907; re-en. Sec. 9859, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1096; re-en. Sec. 9859, R.C.M. 1935; R.C.M. 1947, 93-9113.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-26-206. Enforcement of writ — penalty. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court or judge that any member of such tribunal, corporation, or board or person upon whom the writ has been personally served has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ.

History: En. Sec. 395, p. 124, Bannack Stat.; re-en. Sec. 454, p. 225, L. 1867; re-en. Sec. 530, p. 143, Cod. Stat. 1871; re-en. Sec. 560, p. 183, L. 1877; re-en. Sec. 560, 1st Div. Rev. Stat. 1879; re-en. Sec. 578, 1st Div. Comp. Stat. 1887; amd. Sec. 1973, C. Civ. Proc. 1895; re-en. Sec. 7226, Rev. C. 1907; re-en. Sec. 9860, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1097; re-en. Sec. 9860, R.C.M. 1935; R.C.M. 1947, 93-9114.

Cross-References

Criminal code — limitations on applicability, 45-1-104.

Part 3

Procedure Upon Return of Writ

27-26-301. Time for return and hearing. Writs of mandate issued by the supreme court or by a district court or district judge may, in the discretion of the court issuing the writ, be made returnable and a hearing thereon be heard at any time.

History: En. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; R.C.M. 1947, 93-9301(part).

27-26-302. Answer of adverse party. On the return of the alternative or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

History: En. Sec. 387, p. 123, Bannack Stat.; re-en. Sec. 446, p. 224, L. 1867; re-en. Sec. 522, p. 142, Cod. Stat. 1871; re-en. Sec. 552, p. 182, L. 1877; re-en. Sec. 552, 1st Div. Rev. Stat. 1879; re-en. Sec. 570, 1st Div. Comp. Stat. 1887; amd. Sec. 1965, C. Civ. Proc. 1895; re-en. Sec. 7218, Rev. C. 1907; re-en. Sec. 9852, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1089; re-en. Sec. 9852, R.C.M. 1935; R.C.M. 1947, 93-9106.

Cross-References

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-26-303. Jury trial. (1) If an answer is made which raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court or judge may, in its or his discretion, order the question to be tried before a jury and postpone the argument until the trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any damages which the applicant may have sustained if it finds for him.

(2) If the proceeding is in the district court or before a district judge, the trial must take place as in other cases. If a jury is required in the supreme court, a jury must be drawn and selected from the jury box of Lewis and Clark County and the clerk of the district court of that county shall place the box in the custody of the clerk of the supreme court for that purpose. The conduct of the trial must be the same as in the district court, and the clerk of the supreme court has the same authority to issue process and enter orders and judgments as the district court clerk has in like cases.

History: En. Sec. 388, p. 123, Bannack Stat.; re-en. Sec. 447, p. 224, L. 1867; re-en. Sec. 523, p. 142, Cod. Stat. 1871; re-en. Sec. 553, p. 182, L. 1877; re-en. Sec. 553, 1st Div. Rev. Stat. 1879; re-en. Sec. 571, 1st Div. Comp. Stat. 1887; en. Sec. 1966, C. Civ. Proc. 1895; re-en. Sec. 7219, Rev. C. 1907; re-en. Sec. 9853, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1090; re-en. Sec. 9853, R.C.M. 1935; R.C.M. 1947, 93-9107; amd. Sec. 56, Ch. 12, L. 1979.

27-26-304. Applicant's response to answer. On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency and may contradict it by proof, either in direct denial or by way of avoidance.

History: En. Sec. 389, p. 123, Bannack Stat.; re-en. Sec. 448, p. 224, L. 1867; re-en. Sec. 524, p. 142, Cod. Stat. 1871; re-en. Sec. 554, p. 183, L. 1877; re-en. Sec. 554, 1st Div. Rev. Stat. 1879; re-en. Sec. 572, 1st Div. Comp. Stat. 1887; re-en. Sec. 1967, C. Civ. Proc. 1895; re-en. Sec. 7220, Rev. C. 1907; re-en. Sec. 9854, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1091; re-en. Sec. 9854, R.C.M. 1935; R.C.M. 1947, 93-9108.

Cross-References

Trials, Title 25, ch. 7.

27-26-305. Motion for new trial. The motion for a new trial must be made in the court in which the issue of fact is tried.

History: En. Sec. 555, p. 183, L. 1877; re-en. Sec. 555, 1st Div. Rev. Stat. 1879; re-en. Sec. 573, 1st Div. Comp. Stat. 1887; re-en. Sec. 1968, C. Civ. Proc. 1895; re-en. Sec. 7221, Rev. C. 1907; re-en. Sec. 9855, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1092; re-en. Sec. 9855, R.C.M. 1935; R.C.M. 1947, 93-9109.

Cross-References

New trial, Title 25, ch. 11.

New trials — amendment of judgment, Rule 59, M.R.Civ.P. (see Title 25, ch. 20).

27-26-306. Argument to proceed if no new trial. If no notice of a motion for a new trial be given or, if given, the motion be denied, the argument must proceed at any time the court or judge may direct.

History: En. Sec. 1969, C. Civ. Proc. 1895; re-en. Sec. 7222, Rev. C. 1907; re-en. Sec. 9856, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1093; re-en. Sec. 9856, R.C.M. 1935; R.C.M. 1947, 93-9110.

27-26-307. Procedure when there is no answer or no material issue of fact. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue immaterial statements not affecting the substantial right of the parties, the court or judge must proceed to hear or fix a day for hearing the argument of the case.

History: En. Sec. 392, p. 124, Bannack Stat.; re-en. Sec. 451, p. 225, L. 1867; re-en. Sec. 527, p. 143, Cod. Stat. 1871; amd. Sec. 557, p. 183, L. 1877; re-en. Sec. 557, 1st Div. Rev. Stat. 1879; re-en. Sec. 575, 1st Div. Comp. Stat. 1887; re-en. Sec. 1970, C. Civ. Proc.

1895; re-en. Sec. 7223, Rev. C. 1907; re-en. Sec. 9857, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1094; re-en. Sec. 9857, R.C.M. 1935; R.C.M. 1947, 93-9111.

Part 4

Judgment

27-26-401. Default not permitted. The writ cannot be granted by default. The case must be heard by the court or judge, whether the adverse party appear or not.

History: En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).

27-26-402. Judgment for applicant. If judgment is given for the applicant:

(1) he may recover the damages which he has sustained, as found by the jury or as determined by the court or referees, if a reference was ordered, together with costs;

(2) an execution may issue for such damages and costs; and

(3) a peremptory mandate must be awarded without delay.

History: En. Sec. 393, p. 124, Bannack Stat.; re-en. Sec. 452, p. 225, L. 1867; re-en. Sec. 528, p. 143, Cod. Stat. 1871; re-en. Sec. 558, p. 183, L. 1877; re-en. Sec. 558, 1st Div. Rev. Stat. 1879; re-en. Sec. 576, 1st Div. Comp. Stat. 1887; re-en. Sec. 1971, C. Civ. Proc. 1895; re-en. Sec. 7224, Rev. C. 1907; re-en. Sec. 9858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1095; amd. Sec. 1, Ch. 5, L. 1925; re-en. Sec. 9858, R.C.M. 1935; R.C.M. 1947, 93-9112(part); amd. Sec. 57, Ch. 12, L. 1979.

27-26-403. Officers not to be personally liable. In all cases where the respondent is a state, county, or municipal officer, all damages and costs, or either, which may be recovered or awarded shall be recovered and awarded against the state, county, or municipal corporation represented by such officer and not against such officer so appearing in said proceeding. The same shall be a proper claim against the state or county or municipal corporation for which such officer shall have appeared and shall be paid as other claims against the state, county, or municipality are paid; but in all such cases, the court shall first determine that the officer appeared and made defense in such proceeding in good faith.

History: En. Sec. 393, p. 124, Bannack Stat.; re-en. Sec. 452, p. 225, L. 1867; re-en. Sec. 528, p. 143, Cod. Stat. 1871; re-en. Sec. 558, p. 183, L. 1877; re-en. Sec. 558, 1st Div. Rev. Stat. 1879; re-en. Sec. 576, 1st Div. Comp. Stat. 1887; re-en. Sec. 1971, C. Civ. Proc. 1895; re-en. Sec. 7224, Rev. C. 1907; re-en. Sec. 9858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1095; amd. Sec. 1, Ch. 5, L. 1925; re-en. Sec. 9858, R.C.M. 1935; R.C.M. 1947, 93-9112(part).

Cross-References

Liability exposure, Title 2, ch. 9, part 1.

Governmental entity to be joined as defendant — immunization, defense, and indemnification of employees, 2-9-305.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

CHAPTER 27

WRIT OF PROHIBITION

Part 1 — General Provisions

27-27-101. Definition and function of writ of prohibition.
27-27-102. Issuance of writ.
27-27-103. Form and content of writ.
27-27-104. Application of procedure governing mandamus.

Part 1

General Provisions

27-27-101. Definition and function of writ of prohibition. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

History: En. Sec. 561, p. 184, L. 1877; re-en. Sec. 561, 1st Div. Rev. Stat. 1879; re-en. Sec. 579, 1st Div. Comp. Stat. 1887; amd. Sec. 1980, C. Civ. Proc. 1895; re-en. Sec. 7227, Rev. C. 1907; re-en. Sec. 9861, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1102; re-en. Sec. 9861, R.C.M. 1935; R.C.M. 1947, 93-9201; amd. Sec. 14, Ch. 3, L. 1985.

Cross-References

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

27-27-102. Issuance of writ. The same may be issued by the supreme court or the district court or any district judge to any inferior tribunal or to a corporation, board, or person in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit on the application of the person beneficially interested.

History: En. Sec. 562, p. 184, L. 1877; re-en. Sec. 562, 1st Div. Rev. Stat. 1879; re-en. Sec. 580, 1st Div. Comp. Stat. 1887; amd. Sec. 1981, C. Civ. Proc. 1895; re-en. Sec. 7228, Rev. C. 1907; re-en. Sec. 9862, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1103; re-en. Sec. 9862, R.C.M. 1935; R.C.M. 1947, 93-9202.

Cross-References

Supreme Court — original jurisdiction, 3-2-202.

District Court — original jurisdiction, 3-5-302.

District Court — powers of Judges at chambers, 3-5-311.

Affidavits, Title 26, ch. 1, part 10.

27-27-103. Form and content of writ. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court or judge from which it is issued and to show cause before such court or judge, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

History: En. Sec. 563, p. 184, L. 1877; re-en. Sec. 563, 1st Div. Rev. Stat. 1879; re-en. Sec. 581, 1st Div. Comp. Stat. 1887; re-en. Sec. 1982, C. Civ. Proc. 1895; re-en. Sec. 7229, Rev. C. 1907; re-en. Sec. 9863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1104; re-en. Sec. 9863, R.C.M. 1935; R.C.M. 1947, 93-9203.

27-27-104. Application of procedure governing mandamus. The provisions of chapter 26, except 27-26-101, 27-26-102, 27-26-201, and 27-26-203, apply to this proceeding.

History: Ap. p. Sec. 564, p. 184, L. 1877; re-en. Sec. 564, 1st Div. Rev. Stat. 1879; re-en. Sec. 582, 1st Div. Comp. Stat. 1887; re-en. Sec. 1983, C. Civ. Proc. 1895; re-en. Sec. 7230, Rev. C. 1907; re-en. Sec. 9864, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1105; re-en. Sec. 9864, R.C.M. 1935; Sec. 93-9204, R.C.M. 1947; Ap. p. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; Sec. 93-9301, R.C.M. 1947; Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-9302, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9204, 93-9301(part), 93-9302(part), 93-9303(part).

CHAPTER 28

QUO WARRANTO

Part 1 — General Provisions

27-28-101. When proceeding may be instituted for unlawful assertion of authority.
27-28-102. When proceeding may be brought against a corporation for misconduct.
27-28-103. When attorney general required to commence an action.
27-28-104. Upon whose relation action brought — security for costs.
27-28-105. Jurisdiction and venue.
27-28-106. Precedence on court calendar.

Part 2 — Procedure in General

27-28-201. Leave to file complaint.
27-28-202. Summons — complaint filed without leave.
27-28-203. Service by publication.
27-28-204. Pleadings.
27-28-205. Judgment — unlawful assertion of authority.
27-28-206. Right to appeal.
27-28-207. Procedure when action brought in supreme court.

Part 3 — Actions by Private Persons for Usurpation of Office

27-28-301. When action may be commenced — undertaking for security.

27-28-302. Contents of complaint.
27-28-303. Who may be made defendants.
27-28-304. Whose rights determined in judgment.
27-28-305. No stay of judgment of ouster pending appeal.
27-28-306. Rights of prevailing party to take office and demand books and papers.
27-28-307. Refusal to turn over books and papers punishable as contempt.
27-28-308. Subsequent action for damages for usurpation.

Part 4 — Actions to Oust Irregularly Elected Corporate Directors

27-28-401. When judgment of ouster rendered.
27-28-402. Court order to hold new election.

Part 5 — Actions Against Corporations

27-28-501. Judgment forbidding continuation of offending acts.
27-28-502. Judgment dissolving corporation.
27-28-503. Costs — judgment against corporation or alleged corporation.
27-28-504. Court appointed trustees to settle affairs of dissolved corporation.
27-28-505. Powers and duties of trustees — liability.
27-28-506. Refusal to deliver assets or papers to trustees — punishment for contempt, liability.

Part 1

General Provisions

27-28-101. When proceeding may be instituted for unlawful assertion of authority. A civil action may be brought in the name of the state against:

(1) a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise within this state or an office in a corporation created by the authority of this state;

(2) a public officer, civil or military, who does or suffers an act which, by the provisions of law, works a forfeiture of his office;

(3) an association of persons who act as a corporation within this state without being legally incorporated.

History: En. Sec. 1410, C. Civ. Proc. 1895; re-en. Sec. 6943, Rev. C. 1907; re-en. Sec. 9576, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 803; re-en. Sec. 9576, R.C.M. 1935; R.C.M. 1947, 93-6401.

27-28-102. When proceeding may be brought against a corporation for misconduct. A like action may be brought against a corporation when it has:

(1) offended against a provision of an act for its creation or renewal or any act altering or amending such acts;

(2) forfeited its privileges and franchises by nonuser;

(3) committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises;

(4) misused a franchise or privilege conferred upon it by law or exercised a franchise or privilege not so conferred.

History: En. Sec. 1411, C. Civ. Proc. 1895; re-en. Sec. 6944, Rev. C. 1907; re-en. Sec. 9577, R.C.M. 1921; re-en. Sec. 9577, R.C.M. 1935; R.C.M. 1947, 93-6402.

27-28-103. When attorney general required to commence an action. The attorney general shall commence an action:

(1) when directed by the governor; and

(2) when, upon complaint or otherwise, he has good reason to believe that any case specified in 27-28-102 can be established by proof.

History: En. Sec. 1412, C. Civ. Proc. 1895; re-en. Sec. 6945, Rev. C. 1907; re-en. Sec. 9578, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 803; re-en. Sec. 9578, R.C.M. 1935; R.C.M. 1947, 93-6403.

27-28-104. Upon whose relation action brought — security for costs. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under 27-28-101(1), he may require security for costs, to be given as in other cases.

History: En. Sec. 1413, C. Civ. Proc. 1895; re-en. Sec. 6946, Rev. C. 1907; re-en. Sec. 9579, R.C.M. 1921; re-en. Sec. 9579, R.C.M. 1935; R.C.M. 1947, 93-6404.

Cross-References

Security for costs, Title 25, ch. 10, part 6.

27-28-105. Jurisdiction and venue. An action under this chapter can be brought in the supreme court of the state or in the district court of the county in which the defendant or one of the defendants resides or is found or, when the defendant is a corporation, in the county in which it is situated or has a place of business.

History: En. Sec. 1417, C. Civ. Proc. 1895; re-en. Sec. 6950, Rev. C. 1907; re-en. Sec. 9583, R.C.M. 1921; re-en. Sec. 9583, R.C.M. 1935; R.C.M. 1947, 93-6408.

Cross-References

Original proceeding — extraordinary writs — acceptance and manner of conducting, Rule 17, M.R.App.P. (see Title 25, ch. 21).

27-28-106. Precedence on court calendar. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern, shall, on the motion of the attorney general or the attorney of the party, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties.

History: En. Sec. 1433, C. Civ. Proc. 1895; re-en. Sec. 6966, Rev. C. 1907; re-en. Sec. 9599, R.C.M. 1921; re-en. Sec. 9599, R.C.M. 1935; R.C.M. 1947, 93-6424.

Part 2

Procedure in General

27-28-201. Leave to file complaint. Upon application for leave to file a complaint, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave and may hear the defendant in opposition thereto; and if leave be granted, an entry thereof shall be made on the minutes of the court or the fact shall be endorsed by the judge on the complaint, which shall then be filed.

History: En. Sec. 1418, C. Civ. Proc. 1895; re-en. Sec. 6951, Rev. C. 1907; re-en. Sec. 9584, R.C.M. 1921; re-en. Sec. 9584, R.C.M. 1935; R.C.M. 1947, 93-6409.

27-28-202. Summons — complaint filed without leave. When the complaint is filed without leave and notice, a summons shall issue and be served as in other cases.

History: En. Sec. 1419, C. Civ. Proc. 1895; re-en. Sec. 6952, Rev. C. 1907; re-en. Sec. 9585, R.C.M. 1921; re-en. Sec. 9585, R.C.M. 1935; R.C.M. 1947, 93-6410.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-28-203. Service by publication. When a summons is returned not served because the defendant or its officers or office cannot be found within the county, the clerk shall publish the summons as in other cases.

History: En. Sec. 1420, C. Civ. Proc. 1895; re-en. Sec. 6953, Rev. C. 1907; re-en. Sec. 9586, R.C.M. 1921; re-en. Sec. 9586, R.C.M. 1935; R.C.M. 1947, 93-6411.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-28-204. Pleadings. The pleadings shall be as in other cases.

History: En. Sec. 1421, C. Civ. Proc. 1895; re-en. Sec. 6954, Rev. C. 1907; re-en. Sec. 9587, R.C.M. 1921; re-en. Sec. 9587, R.C.M. 1935; R.C.M. 1947, 93-6412.

Cross-References

Pleadings in general, Title 25, ch. 4, part 2.

Pleadings allowed — form of motions, Rule 7, M.R.Civ.P. (see Title 25, ch. 20).

General rules of pleading, Rule 8, M.R.Civ.P. (see Title 25, ch. 20).

Pleading special matters, Rule 9, M.R.Civ.P. (see Title 25, ch. 20).

Form of pleadings, Rule 10, M.R.Civ.P. (see Title 25, ch. 20).

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

27-28-205. Judgment — unlawful assertion of authority. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom and that the relator recover his costs.

History: En. Sec. 1422, C. Civ. Proc. 1895; re-en. Sec. 6955, Rev. C. 1907; re-en. Sec. 9588, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 809; re-en. Sec. 9588, R.C.M. 1935; R.C.M. 1947, 93-6413.

Cross-References

Imposition of costs, Title 25, ch. 10, part 1.

27-28-206. Right to appeal. If the action is commenced in the district court, an appeal may be taken from the judgment by either party to the supreme court as in other cases.

History: En. Sec. 1435, C. Civ. Proc. 1895; re-en. Sec. 6968, Rev. C. 1907; re-en. Sec. 9601, R.C.M. 1921; re-en. Sec. 9601, R.C.M. 1935; R.C.M. 1947, 93-6426(part).

Cross-References

Appeal to Supreme Court, Title 25, ch. 12.

Rules of Appellate Procedure, Title 25, ch. 21.

Appeals from judgments and orders of District Court — how taken, Rule 4, M.R.App.P. (see Title 25, ch. 21).

Rules incorporated into statutes, Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

27-28-207. Procedure when action brought in supreme court. Actions under this chapter commenced in the supreme court must be conducted in the same manner as if commenced in the district court, and the clerk of the supreme court has the same authority to issue summons and other process and to enter orders and judgments as the clerk of the district court has in like cases. All pleadings and the conduct of the trial must be the same as in the district court. If a jury is required to determine an issue of fact, a jury must be drawn and selected from the jury box of Lewis and Clark County and the clerk of the district court of that county shall place the jury box in the custody of the clerk of the supreme court for that purpose.

History: En. Sec. 1434, C. Civ. Proc. 1895; re-en. Sec. 6967, Rev. C. 1907; re-en. Sec. 9600, R.C.M. 1921; re-en. Sec. 9600, R.C.M. 1935; R.C.M. 1947, 93-6425; amd. Sec. 58, Ch. 12, L. 1979.

Cross-References

Original proceeding — acceptance and manner of conducting, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Part 3

Actions by Private Persons for Usurpation of Office

27-28-301. When action may be commenced — undertaking for security. A person claiming to be entitled to a public office unlawfully held and exercised by another, by himself or by an attorney and counselor at law, may bring an action therefor in the name of the state, as provided in this chapter. On filing the complaint, such person shall enter into an undertaking, with two sufficient sureties to be approved by the judge or any judge of the court in which the action is brought, conditioned that such person will pay any judgment for costs or damages recovered against him and all costs and expenses incurred in the prosecution of the action, which undertaking shall be filed with the clerk of the court.

History: En. Sec. 1414, C. Civ. Proc. 1895; re-en. Sec. 6947, Rev. C. 1907; re-en. Sec. 9580, R.C.M. 1921; re-en. Sec. 9580, R.C.M, 1935; R.C.M. 1947, 93-6405.

27-28-302. Contents of complaint. When the action is against a person for usurping an office, the complaint shall set forth the name of the person who claims to be entitled thereto, with an averment of his right thereto.

History: En. Sec. 1415, C. Civ. Proc. 1895; re-en. Sec. 6948, Rev. C. 1907; re-en. Sec. 9581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 805; re-en. Sec. 9581, R.C.M. 1935; R.C.M. 1947, 93-6406(part).

27-28-303. Who may be made defendants. All persons who claim to be entitled to the same office or franchise may be made defendants in the same action to try their respective rights to such office or franchise.

History: En. Sec. 1416, C. Civ. Proc. 1895; re-en. Sec. 6949, Rev. C. 1907; re-en. Sec. 9582, R.C.M. 1921; re-en. Sec. 9582, R.C.M. 1935; R.C.M. 1947, 93-6407.

27-28-304. Whose rights determined in judgment. Judgment may be rendered upon the right of the defendant and also upon the right of the person averred to be entitled, as provided in 27-28-302, or only upon the right of the defendant, as justice requires.

History: En. Sec. 1415, C. Civ. Proc. 1895; re-en. Sec. 6948, Rev. C. 1907; re-en. Sec. 9581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 805; re-en. Sec. 9581, R.C.M. 1935; R.C.M. 1947, 93-6406(part).

27-28-305. No stay of judgment of ouster pending appeal. If there is judgment of ouster against the defendant, there shall be no stay of execution or proceedings pending such appeal.

History: En. Sec. 1435, C. Civ. Proc. 1895; re-en. Sec. 6968, Rev. C. 1907; re-en. Sec. 9601, R.C.M. 1921; re-en. Sec. 9601, R.C.M. 1935; R.C.M. 1947, 93-6426(part).

27-28-306. Rights of prevailing party to take office and demand books and papers. If judgment be rendered in favor of the person averred to be entitled to an office, he may, after taking the oath of office and executing any official bond required by law, take upon him the execution of the office and he shall immediately thereafter demand of the defendant all the books and papers in his custody or within his power appertaining to the office from which he has been ousted.

History: En. Sec. 1425, C. Civ. Proc. 1895; re-en. Sec. 6958, Rev. C. 1907; re-en. Sec. 9591, R.C.M. 1921; re-en. Sec. 9591, R.C.M. 1935; R.C.M. 1947, 93-6416.

27-28-307. Refusal to turn over books and papers punishable as contempt. If such defendant refuse or neglect to deliver over any such book or paper pursuant to such demand, he shall be deemed guilty of a contempt of court and shall be fined in any sum not exceeding $10,000 and imprisoned in the jail of the county until he complies with the order of the court or is otherwise discharged by due course of law.

History: En. Sec. 1427, C. Civ. Proc. 1895; re-en. Sec. 6960, Rev. C. 1907; re-en. Sec. 9593, R.C.M. 1921; re-en. Sec. 9593, R.C.M. 1935; R.C.M. 1947, 93-6418.

Cross-References

Contempts, Title 3, ch. 1, part 5.

27-28-308. Subsequent action for damages for usurpation. The person in whose favor judgment is rendered may, at any time within 1 year after the date of such judgment, bring an action against the party ousted and recover the damages he sustained by reason of such usurpation.

History: En. Sec. 1426, C. Civ. Proc. 1895; re-en. Sec. 6959, Rev. C. 1907; re-en. Sec. 9592, R.C.M. 1921; re-en. Sec. 9592, R.C.M. 1935; R.C.M. 1947, 93-6417.

Part 4

Actions to Oust Irregularly Elected Corporate Directors

Part Cross-References

Business corporations — directors and officers, Title 35, ch. 1, part 4.

Nonprofit corporations — directors and officers, Title 35, ch. 2, part 4.

27-28-401. When judgment of ouster rendered. When the action is against a director of a corporation and the court finds that at his election either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted and of induction in favor of the person who was entitled to be declared elected at such election.

History: **En. Sec. 1423, C. Civ. Proc. 1895; re-en. Sec. 6956, Rev. C. 1907; re-en. Sec. 9589, R.C.M. 1921; re-en. Sec. 9589, R.C.M. 1935; R.C.M. 1947, 93-6414.**

27-28-402. Court order to hold new election. In a case named in 27-28-401, the court may order a new election to be held, at a time and place and by judges appointed by the court, notice of which election and naming the judges shall be given for the time and in the manner provided by law for notice of elections of directors of such corporation. The order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally or left at its principal office, and the court may enforce its order by attachment or in any other manner it deems necessary.

History: **En. Sec. 1424, C. Civ. Proc. 1895; re-en. Sec. 6957, Rev. C. 1907; re-en. Sec. 9590, R.C.M. 1921; re-en. Sec. 9590, R.C.M. 1935; R.C.M. 1947, 93-6415.**

Part 5

Actions Against Corporations

Part Cross-References

Corporations, Partnerships, and Associations, Title 35.

27-28-501. Judgment forbidding continuation of offending acts. When it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense or the exercise of such power.

History: **En. Sec. 1428, C. Civ. Proc. 1895; re-en. Sec. 6961, Rev. C. 1907; re-en. Sec. 9594, R.C.M. 1921; re-en. Sec. 9594, R.C.M. 1935; R.C.M. 1947, 93-6419(part).**

27-28-502. Judgment dissolving corporation. When in any such action it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges, or franchises or has not used the same during a term of 5 years, judgment shall be entered that it be ousted and excluded therefrom and that it be dissolved.

History: **En. Sec. 1428, C. Civ. Proc. 1895; re-en. Sec. 6961, Rev. C. 1907; re-en. Sec. 9594, R.C.M. 1921; re-en. Sec. 9594, R.C.M. 1935; R.C.M. 1947, 93-6419(part).**

27-28-503. Costs — judgment against corporation or alleged corporation. If judgment be rendered against a corporation or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation or against the person claiming to be a corporation.

History: **En. Sec. 1432, C. Civ. Proc. 1895; re-en. Sec. 6965, Rev. C. 1907; re-en. Sec. 9598, R.C.M. 1921; re-en. Sec. 9598, R.C.M. 1935; R.C.M. 1947, 93-6423.**

Cross-References

Costs, Title 25, ch. 10.

Imposition of costs, Title 25, ch. 10, part 1.

27-28-504. Court appointed trustees to settle affairs of dissolved corporation. The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertaking payable to the state, in such sum and with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses.

History: En. Sec. 1429, C. Civ. Proc. 1895; re-en. Sec. 6962, Rev. C. 1907; re-en. Sec. 9595, R.C.M. 1921; re-en. Sec. 9595, R.C.M. 1935; R.C.M. 1947, 93-6420.

27-28-505. Powers and duties of trustees — liability. (1) The trustees shall immediately demand all money, property, and papers within the custody or control of the officers of the corporation belonging to the corporation or in any way necessary for the settlement of its affairs or for the discharge of its debts and liabilities; and they may sue for and recover the demands and property of the corporation.

(2) The trustees are jointly and severally liable to the creditors and stockholders of the corporation to the extent of its property and effects which come into their hands.

History: En. Sec. 1430, C. Civ. Proc. 1895; re-en. Sec. 6963, Rev. C. 1907; re-en. Sec. 9596, R.C.M. 1921; re-en. Sec. 9596, R.C.M. 1935; R.C.M. 1947, 93-6421; amd. Sec. 59, Ch. 12, L. 1979.

27-28-506. Refusal to deliver assets or papers to trustees — punishment for contempt, liability. An officer of such corporation who refuses or neglects to deliver over any such money or other things pursuant to such demand shall be deemed guilty of a contempt of court and shall be fined not exceeding $10,000 and imprisoned in the jail of the proper county until he complies with the order of the court or is otherwise discharged by due course of law, and he shall be liable to the trustees for the value of all money or other things so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal.

History: En. Sec. 1431, C. Civ. Proc. 1895; re-en. Sec. 6964, Rev. C. 1907; re-en. Sec. 9597, R.C.M. 1921; re-en. Sec. 9597, R.C.M. 1935; R.C.M. 1947, 93-6422.

CHAPTER 29

RESERVED

CHAPTER 30

NUISANCES

Part 1 — General Provisions

27-30-101. Definition of nuisance.
27-30-102. Distinction between public and private nuisances.
27-30-103. Action for nuisance.
27-30-104. Right to recover damages unaffected by abatement.
27-30-105. Successive owners liable for nuisance.

Part 2 — Public Nuisances

27-30-201. Public nuisance not legalized by time.
27-30-202. Remedies for public nuisances.
27-30-203. When private person may maintain action for public nuisance.
27-30-204. Abatement of public nuisance by public body or officer or injured party.

Part 3 — Private Nuisances

27-30-301. Remedies for private nuisances.
27-30-302. Abatement of private nuisance by injured party.

Part 1

General Provisions

27-30-101. Definition of nuisance. (1) Anything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

(2) Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

(3) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public or private nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

History: (1)En. Sec. 4550, Civ. C. 1895; re-en. Sec. 6162, Rev. C. 1907; re-en. Sec. 8642, R.C.M. 1921; Cal. Civ. C. Sec. 3479; re-en. Sec. 8642, R.C.M 1935; Sec. 57-101, R.C.M. 1947; (2)En. Sec. 4553, Civ. C. 1895; re-en. Sec. 6165, Rev. C. 1907; re-en. Sec. 8645, R.C.M. 1921; Cal. Civ. C. Sec. 3482; Field Civ. C. Sec. 1952; re-en. Sec. 8645, R.C.M. 1935; Sec. 57-104, R.C.M. 1947; R.C.M. 1947, 57-101, 57-104; (3)En. Sec. 1, Ch. 123, L. 1981.

Cross-References

Criminal code — public nuisance, 45-8-111.

Criminal code — action to abate a public nuisance, 45-8-112.

Interference with canal or ditch easements, 70-17-112.

Public ways, 85-1-111.
Navigable waters, 85-1-112.

27-30-102. Distinction between public and private nuisances. (1) A public nuisance is one which affects, at the same time, an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(2) Every nuisance not included in the definition of subsection (1) is private.

History: (1)En. Sec. 4551, Civ. C. 1895; re-en. Sec. 6163, Rev. C. 1907; re-en. Sec. 8643, R.C.M. 1921; Cal. Civ. C. Sec. 3480; Based on Field Civ. C. Sec. 1950; re-en. Sec. 8643, R.C.M. 1935; Sec. 57-102, R.C.M. 1947; (2)En. Sec. 4552, Civ. C. 1895; re-en. Sec. 6164, Rev. C. 1907; re-en. Sec. 8644, R.C.M. 1921; Cal. Civ. C. Sec. 3481; Field Civ. C. Sec. 1951; re-en. Sec. 8644, R.C.M. 1935; Sec. 57-103, R.C.M. 1947; R.C.M. 1947, 57-102, 57-103.

Cross-References

Criminal code — public nuisance, 45-8-111.

27-30-103. Action for nuisance. A nuisance is the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

History: En. Sec. 228, p. 91, Bannack Stat.; amd. Sec. 249, p. 187, L. 1867; re-en. Sec. 298, p. 93, Cod. Stat. 1871; re-en. Sec. 349, p. 137, L. 1877; re-en. Sec. 349, 1st Div. Rev. Stat. 1879; re-en. Sec. 361, 1st Div. Comp. Stat. 1887; re-en. Sec. 1300, C. Civ. Proc. 1895; re-en Sec. 6865, Rev. C. 1907; re-en. Sec. 9474, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 731; re-en. Sec. 9474, R.C.M. 1935; R.C.M. 1947, 93-6101(part).

27-30-104. Right to recover damages unaffected by abatement. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

History: En. Sec. 4555, Civ. C. 1895; re-en. Sec. 6167, Rev. C. 1907; re-en. Sec. 8647, R.C.M. 1921; Cal. Civ. C. Sec. 3484; Field Civ. C. Sec. 1954; re-en. Sec. 8647, R.C.M. 1935; R.C.M. 1947, 57-106.

27-30-105. Successive owners liable for nuisance. Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

History: En. Sec. 4554, Civ. C. 1895; re-en. Sec. 6166, Rev. C. 1907; re-en. Sec. 8646, R.C.M. 1921; Cal. Civ. C. Sec. 3483; Field Civ. C. Sec. 1953; re-en. Sec. 8646, R.C.M. 1935; R.C.M. 1947, 57-105.

Part 2

Public Nuisances

27-30-201. Public nuisance not legalized by time. No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

History: En. Sec. 4570, Civ. C. 1895; re-en. Sec. 6168, Rev. C. 1907; re-en. Sec. 8648, R.C.M. 1921; Cal. Civ. C. Sec. 3490; Field Civ. C. Sec. 1955; re-en. Sec. 8648, R.C.M. 1935; R.C.M. 1947, 57-107.

27-30-202. Remedies for public nuisances. (1) The remedies against a public nuisance are:

(a) indictment or information;
(b) a civil action; or
(c) abatement.

(2) The remedy by indictment or information is regulated by Titles 45 and 46.

History: (1)En. Sec. 4571, Civ. C. 1895; re-en. Sec. 6169, Rev. C. 1907; re-en. Sec. 8649, R.C.M. 1921; Cal. Civ. C. Sec. 3491; Based on Field Civ. C. Sec. 1956; re-en. Sec. 8649, R.C.M. 1935; Sec. 57-108, R.C.M. 1947; (2)En. Sec. 4572, Civ. C. 1895; re-en. Sec. 6170, Rev. C. 1907; re-en. Sec. 8650, R.C.M. 1921; Cal. Civ. C. Sec. 3492; re-en. Sec. 8650, R.C.M. 1935; Sec. 57-109, R.C.M. 1947; R.C.M. 1947, 57-108, 57-109.

27-30-203. When private person may maintain action for public nuisance. A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise.

History: En. Sec. 4573, Civ. C. 1895; re-en. Sec. 6171, Rev. C. 1907; re-en. Sec. 8651, R.C.M. 1921; Cal. Civ. C. Sec. 3493; Field Civ. C. Sec. 1958; re-en. Sec. 8651, R.C.M. 1935; R.C.M. 1947, 57-110.

27-30-204. Abatement of public nuisance by public body or officer or injured party. A public nuisance may be abated by any public body or officer authorized thereto by law. Any person may abate a public nuisance which is specially injurious to him by removing or, if necessary, destroying the thing that constitutes the same without committing a breach of the peace or doing unnecessary injury.

History: Ap. p. Sec. 4574, Civ. C. 1895; re-en. Sec. 6172, Rev. C. 1907; re-en. Sec. 8652, R.C.M. 1921; Cal. Civ. C. Sec. 3494; Field Civ. C. Sec. 1959; re-en. Sec. 8652, R.C.M. 1935; Sec. 57-111, R.C.M. 1947; Ap. p. Sec. 4575, Civ. C. 1895; re-en. Sec. 6173, Rev. C. 1907; re-en. Sec. 8653, R.C.M. 1921; Cal. Civ. C. Sec. 3495; Field Civ. C. Sec. 1960; re-en. Sec. 8653, R.C.M. 1935; Sec. 57-112, R.C.M. 1947; R.C.M. 1947, 57-111, 57-112.

Cross-References

City or Town Council — power to control nuisances, 7-5-4104.

Noxious weeds — common nuisance, 7-22-2115.

Mausoleum and columbarium — public nuisance, 35-21-712.

Unsanitary condition in building or facility — public nuisance, 50-1-203.

Local Boards of Health — power to abate nuisances, 50-2-116.

Structure creating a fire hazard a public nuisance, 50-62-102.

Fallen wire fencing declared nuisance, 81-4-105.

Male equine animals running at large as nuisance, 81-4-205.

Abandoned horses on public range a public nuisance — condemnation, 81-4-502.

Part 3

Private Nuisances

27-30-301. Remedies for private nuisances. The remedies against a private nuisance are:

(1) a civil action; or
(2) abatement.

History: En. Sec. 4590, Civ. C. 1895; re-en. Sec. 6174, Rev. C. 1907; re-en. Sec. 8654, R.C.M. 1921; Cal. Civ. C. Sec. 3501; Field Civ. C. Sec. 1961; re-en. Sec. 8654, R.C.M. 1935; R.C.M. 1947, 57-113.

27-30-302. Abatement of private nuisance by injured party. A person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing which constitutes the nuisance without committing a breach of the peace or doing unnecessary injury. Where a private nuisance results from a mere omission of the wrongdoer and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

History: Ap. p. Sec. 4591, Civ. C. 1895; re-en. Sec. 6175, Rev. C. 1907; re-en. Sec. 8655, R.C.M. 1921; Cal. Civ. C. Sec. 3502; Field Civ. C. Sec. 1962; re-en. Sec. 8655, R.C.M. 1935; Sec. 57-114, R.C.M. 1947; Ap. p. Sec. 4592, Civ. C. 1895; re-en. Sec. 6176, Rev. C. 1907; re-en. Sec. 8656, R.C.M. 1921; Cal. Civ. C. Sec. 3503; Field Civ. C. Sec. 1963; re-en. Sec. 8656, R.C.M. 1935; Sec. 57-115, R.C.M. 1947; R.C.M. 1947, 57-114, 57-115.

CHAPTER 31

CHANGE OF NAME

Part 1 — General Provisions

27-31-101. Petition for change of name of natural person.
27-31-102. Petition for change of name of nonprofit corporation.
27-31-103. District court jurisdiction.

Part 2 — Procedure

27-31-201. Order setting hearing date — notice.
27-31-202. Filing of objections to change.
27-31-203. Conduct of hearing.
27-31-204. Court order.
27-31-205. Repealed.

Chapter Cross-References

Dissolution decree — restoration of maiden name, 40-4-108.

Vital statistics, Title 50, ch. 15.

Part 1

General Provisions

27-31-101. Petition for change of name of natural person. All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition signed by such person and, if such person is under 18 years of age, by one of the parents, if living, or if both be dead, then by the guardian, and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name and must, if neither parent of such person be living, name as far as known to the petitioner the near relatives of such person and their place of residence.

History: En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; R.C.M. 1947, 93-100-2(part).

27-31-102. Petition for change of name of nonprofit corporation. Any religious, benevolent, literary, or scientific corporation or any corporation bearing or using or being known by the name of any benevolent or charitable order or society may by petition apply to the district court of the county in which its articles of incorporation were originally filed or in which its property is situated for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation and must specify the date of the formation of the corporation, the name proposed, and the reason for the change of name. Upon the filing of the petition, the same procedure shall be followed as upon applications for changes of names of natural persons.

History: En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; R.C.M. 1947, 93-100-2(part); amd. Sec. 60, Ch. 12, L. 1979.

27-31-103. District court jurisdiction. Applications for change of names must be heard and determined by the district court.

History: En. Sec. 2260, C. Civ. Proc. 1895; re-en. Sec. 7360, Rev. C. 1907; re-en. Sec. 9963, R.C.M. 1921; re-en. Sec. 9963, R.C.M. 1935; R.C.M. 1947, 93-100-1.

Part 2

Procedure

27-31-201. Order setting hearing date — notice. (1) When a petition setting out the matters contained in 27-31-101 or 27-31-102 is filed, the court or judge may appoint a time for hearing the petition. Except as provided in subsection (2), notice of the time and place of hearing the petition must be published for 4 successive weeks in some newspaper published in the county, if a newspaper be printed therein, but if no newspaper be printed in the county, a copy of such notice must be posted in at least three public places in the county for a like period.

(2) No publication is required for a change of name of a minor under 27-31-101 if both parents and all legal guardians consent in writing.

History: En. Sec. 2262, C. Civ. Proc. 1895; re-en. Sec. 7362, Rev. C. 1907; amd. Sec. 1, Ch. 7, L. 1911; re-en. Sec. 9965, R.C.M. 1921; re-en. Sec. 9965, R.C.M. 1935; R.C.M. 1947, 93-100-3; amd. Sec. 1, Ch. 233, L. 1987.

27-31-202. Filing of objections to change. At any time before such hearing, objections may be filed by any person who can, in such objections, show to the court or judge good reasons against such change of name.

History: **En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).**

27-31-203. Conduct of hearing. On the day set for the hearing of said petition or at any time to which the hearing is continued or postponed, due proof of the publication or posting of the required notice as set out in 27-31-201 being made, such application must be heard. On the hearing the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the application.

History: **En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).**

27-31-204. Court order. The court or judge may make an order changing the name or dismissing the applications, as to the court or judge may seem right and proper.

History: **En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).**

27-31-205. Repealed. Sec. 3, Ch. 3, L. 1983.

History: **En. Sec. 2264, C. Civ. Proc. 1895; re-en. Sec. 7364, Rev. C. 1907; re-en. Sec. 9967, R.C.M. 1921; re-en. Sec. 9967, R.C.M. 1935; R.C.M. 1947, 93-100-5; amd. Sec. 61, Ch. 12, L. 1979.**

CHAPTER 32

JUDICIAL DETERMINATION OF BIRTH DATE

Part 1 — General Provisions
Petition for Determination

27-32-101. Who may petition — where petition filed.
27-32-102. Contents of petition.
27-32-103. Exclusive jurisdiction of district courts.
27-32-104. Fees.

Part 2 — Preliminary Procedure—Hearing

27-32-201. Order setting hearing date — notice.
27-32-202. Objections to granting of petition.
27-32-203. Conduct of hearing.
27-32-204. Transfer of proceeding to proper county.

Part 3 — Judgment—Appeal

27-32-301. Judgment.
27-32-302. Clerk to certify and file judgment.
27-32-303. Appeal.

Chapter Cross-References

Establishment of date and place of birth when certificate cannot be obtained, 50-15-205.

Part 1

General Provisions -- Petition for Determination

27-32-101. Who may petition — where petition filed. For the purpose of having a judicial determination of the date of birth, any citizen of the United States, either natural born or naturalized, may file with the clerk of the district court of the county of his residence a petition.

History: En. Sec. 1, Ch. 16, L. 1943; R.C.M. 1947, 93-101-1(part).

27-32-102. Contents of petition. The petition must be duly verified by the petitioner and must contain the following:

(1) The petition must state:

(a) that the petitioner is a citizen of the United States;

(b) that he has resided in the state of Montana for 1 year last past and in the county in which the action is brought for at least 90 days immediately preceding the commencement of the action;

(c) the place of his birth;

(d) the names of his parents, together with the place of the birth of each of his parents and their address, if they are living;

(e) the name and address of each of his brothers and sisters;

(f) if the address of either of the parents or of any of the brothers or sisters is not known, then their last known place of address.

(2) If the petitioner was born outside of the United States, then the petition must state:

(a) whether his parents came to the United States and, if so, where they came and where they resided or reside;

(b) whether they or either of them were naturalized within the United States and, if so, when and where such naturalization took place.

History: En. Sec. 1, Ch. 16, L. 1943; R.C.M. 1947, 93-101-1(part).

27-32-103. Exclusive jurisdiction of district courts. The district courts of this state shall have exclusive jurisdiction to hear and determine all petitions hereunder.

History: En. Sec. 6, Ch. 16, L. 1943; R.C.M. 1947, 93-101-6(part).

27-32-104. Fees. The petitioner, upon the filing of the petition, must pay to the clerk of court a fee of $1, and upon the entry of judgment the applicant must pay to the clerk of court an additional fee of $1. No charge shall be made for posting of the notices required hereunder. If the applicant shall provide a true copy of the judgment rendered, then the clerk of court must certify the same without additional charge.

History: En. Sec. 4, Ch. 16, L. 1943; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 93-101-4(part).

Part 2

Preliminary Procedure — Hearing

27-32-201. Order setting hearing date — notice. Upon the filing of this petition with the clerk of the district court, an order shall be made by the court or judge thereof fixing the date of the hearing of the petition and directing that notice of such hearing be given as in such order set forth. Notice shall be given by posting in three public places within the county for a period of not less than 10 or more than 30 days, as the court, in its discretion, shall determine.

History: En. Sec. 2, Ch. 16, L. 1943; R.C.M. 1947, 93-101-2(part).

27-32-202. Objections to granting of petition. Any citizen of the United States may appear and object to the granting of such petition, but all such objections shall be made in writing.

History: En. Sec. 2, Ch. 16, L. 1943; R.C.M. 1947, 93-101-2(part).

27-32-203. Conduct of hearing. At the time fixed for the hearing of such petition, the petitioner must appear and testify. Upon the hearing thereof, affidavits shall be received in evidence and shall have the same force and effect as if the testimony had been taken by deposition.

History: En. Sec. 3, Ch. 16, L. 1943; R.C.M. 1947, 93-101-3(part).

Cross-References

Use of depositions in court proceedings, Rule 32, M.R.Civ.P. (see Title 25, ch. 20).

27-32-204. Transfer of proceeding to proper county. If upon the hearing of the petition it shall appear that the petitioner is entitled to have judgment entered as herein provided but that the petition has been filed in the wrong county, then the court shall, by appropriate order, direct that the proceeding be transferred to the proper county.

History: En. Sec. 5, Ch. 16, L. 1943; R.C.M. 1947, 93-101-5.

Part 3

Judgment — Appeal

27-32-301. Judgment. If the court shall be satisfied by competent evidence of the sufficiency of the petition that the applicant is a citizen of the United States, that he has been a citizen of the state of Montana for 1 year last past and of the county for more than 90 days preceding the filing of the petition, and that the applicant's date of birth is proven, then the court shall render judgment accordingly and that judgment shall constitute conclusive evidence of the date of the birth of the applicant.

History: En. Sec. 3, Ch. 16, L. 1943; R.C.M. 1947, 93-101-3(part).

27-32-302. Clerk to certify and file judgment. The clerk of the court shall certify to two copies of such judgment and file one with the department of health and environmental sciences, Helena, and the other with the county clerk and recorder of the county in which the judgment was obtained.

History: En. Sec. 4, Ch. 16, L. 1943; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 93-101-4(part).

27-32-303. Appeal. Any citizen may appeal from the judgment rendered the same as in civil actions.

History: En. Sec. 6, Ch. 16, L. 1943; R.C.M. 1947, 93-101-6(part).

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Rules incorporated into statutes, Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

TITLE 28

CONTRACTS AND OTHER OBLIGATIONS

Ch.
1. Obligations in General.
2. Contracts.
3. Interpretation of Contracts.
Chapters 4 through 9 reserved.
10. Agency.
11. Guaranty, Indemnity, and Suretyship.

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Part 1

General Provisions

28-1-101. Definitions. (1) An obligation is a legal duty by which a person is bound to do or not to do a certain thing.

(2) Performance of an obligation for the delivery of money only is called payment.

History: En. Secs. 1920, 2005, Civ. C. 1895; re-en. Secs. 4892, 4927, Rev. C. 1907; re-en. Secs. 7394, 7429, R.C.M. 1921; Cal. Civ. C. Secs. 1427, 1478; Field Civ. C. Secs. 670, 704; re-en. Secs. 7394, 7429, R.C.M. 1935; R.C.M. 1947, 58-101, 58-406.

Cross-References

Obligation defined, 27-1-105.

Contract defined, 28-2-101.

28-1-102. How obligations arise. An obligation arises either from:

(1) the contract of the parties; or

(2) the operation of law.

History: En. Sec. 1921, Civ. C. 1895; re-en. Sec. 4893, Rev. C. 1907; re-en. Sec. 7395, R.C.M. 1921; Cal. Civ. C. Sec. 1428; Based on Field Civ. C. Sec. 671; re-en. Sec. 7395, R.C.M. 1935; R.C.M. 1947, 58-102(part).

Cross-References

Obligation defined, 27-1-105.

Contract defined, 28-2-101.

28-1-103. What rules govern interpretation of contracts and other obligations. The rules which govern the interpretation of contracts are prescribed by this title and Title 1. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

History: En. Sec. 1930, Civ. C. 1895; re-en. Sec. 4894, Rev. C. 1907; re-en. Sec. 7396, R.C.M. 1921; Cal. Civ. C. Sec. 1429; Field Civ. C. Sec. 672; re-en. Sec. 7396, R.C.M. 1935; R.C.M. 1947, 58-103; amd. Sec. 1, Ch. 117, L. 1979.

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Interpretation of contract of suretyship, 28-11-403.

U.C.C. — general definitions and principles of interpretation, Title 30, ch. 1, part 2.

28-1-104. Relief from forfeiture. Whenever by the terms of an obligation a party thereto incurs a forfeiture or a loss in the nature of a forfeiture by reason of his failure to comply with its provisions, he may be relieved therefrom upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

History: En. Sec. 4261, Civ. C. 1895; re-en. Sec. 6039, Rev. C. 1907; re-en. Sec. 8658, R.C.M. 1921; Cal. Civ. C. Sec. 3275; re-en. Sec. 8658, R.C.M. 1935; R.C.M. 1947, 17-102.

Cross-References

Definition of negligence and willfully, 1-1-204.

Fraud, 28-2-404 through 28-2-406.

Part 2

Obligations Imposed by Law

28-1-201. General duty of care. Every person is bound, without contract, to abstain from injuring the person or property of another or infringing upon any of his rights.

History: En. Sec. 2290, Civ. C. 1895; re-en. Sec. 5071, Rev. C. 1907; re-en. Sec. 7573, R.C.M. 1921; Cal. Civ. C. Sec. 1708; Field Civ. C. Sec. 847; re-en. Sec. 7573, R.C.M. 1935; R.C.M. 1947, 58-601.

Cross-References

Declaration of rights, Art. II, Mont. Const.

Negligence defined, 1-1-204.

Limit on rights, 1-3-205.

Injury defined, 27-1-106.

Right to compensatory damages, 27-1-202.

Liability for negligence as well as willful acts, 27-1-701.

28-1-202. Obligation of one who unilaterally decides to render service. One who officiously and without the consent of the real or apparent owner of a thing takes it into his possession for the purpose of rendering service about it must complete such service and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner and must account to the owner for the residue.

History: En. Sec. 2760, Civ. C. 1895; re-en. Sec. 5295, Rev. C. 1907; re-en. Sec. 7810, R.C.M. 1921; Cal. Civ. C. Sec. 2078; Field Civ. C. Sec. 1083; re-en. Sec. 7810, R.C.M. 1935; R.C.M. 1947, 41-501.

Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Immunity of persons donating food for free distribution, 27-1-716.

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Contracts for personal services limited to 2 years, 28-2-722.

Gratuitous deposits, Title 70, ch. 6, part 3.

28-1-203. Enforcement of obligations arising by operation of law. An obligation arising from operation of law may be enforced by civil action or proceeding or in the manner provided by law.

History: En. Sec. 1921, Civ. C. 1895; re-en. Sec. 4893, Rev. C. 1907; re-en. Sec. 7395, R.C.M. 1921; Cal. Civ. C. Sec. 1428; Based on Field Civ. C. Sec. 671; re-en. Sec. 7395, R.C.M. 1935; R.C.M. 1947, 58-102(part).

Cross-References

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20), Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

Obligations which cannot be specifically enforced, 27-1-412.

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

Termination, cancellation, nonrenewal, or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

28-1-204 through 28-1-210 reserved.

28-1-211. Implied covenant of good faith and fair dealing. The conduct required by the implied covenant of good faith and fair dealing is honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

History: En. Sec. 1, Ch. 571, L. 1987.

Part 3

Joint Obligations

Part Cross-References

Liability of joint debtors, Title 25, ch. 15.

Multiple defendants jointly and severally liable, 27-1-703.

Nature of partner's liability, 35-10-307.

28-1-301. Types of obligations involving several persons. Except as provided in 27-1-703, an obligation imposed upon several persons or a right created in favor of several persons may be:

(1) joint;
(2) several; or
(3) joint and several.

History: En. Sec. 1940, Civ. C. 1895; re-en. Sec. 4895, Rev. C. 1907; re-en. Sec. 7397, R.C.M. 1921; Cal. Civ. C. Sec. 1430; Field Civ. C. Sec. 673; re-en. Sec. 7397, R.C.M. 1935; R.C.M. 1947, 58-201; amd. Sec. 2, Ch. 253, L. 1987.

Cross-References

Performance by one of several joint debtors, 28-1-1102.

Performance to one of several joint creditors, 28-1-1103.

28-1-302. Joint obligations and covenants to be taken as joint and several. Except as provided in 27-1-703, after March 1, 1895, all joint obligations and covenants shall be taken and held to be joint and several obligations and covenants.

History: En. Sec. 1941, Civ. C. 1895; re-en. Sec. 4896, Rev. C. 1907; re-en. Sec. 4896, Rev. C. 1907; re-en. Sec. 7398, R.C.M. 1921; Cal. Civ. C. Sec. 1431; re-en. Sec. 7398, R.C.M. 1935; R.C.M. 1947, 58-202; amd. Sec. 3, Ch. 253, L. 1987.

Cross-References

Nature of partner's liability, 35-10-307.

28-1-303. Right to contribution from joint debtors. Except as provided in 27-1-703, a party to a joint or joint and several obligation who satisfies more than his share of the claim against all may require a proportionate contribution from all the parties joined with him.

History: En. Sec. 1942, Civ. C. 1895; re-en. Sec. 4897; Rev. C. 1907; re-en. Sec. 7399, R.C.M. 1921; Cal. Civ. C. Sec. 1432; Field Civ. C. Sec. 675; re-en. Sec. 7399, R.C.M. 1935; R.C.M. 1947, 58-203; amd. Sec. 4, Ch. 253, L. 1987.

Cross-References

Compelling contribution or repayment — joint debtor, surety, 25-13-104.

Effect of discharge — right of contribution, 25-15-202.

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Performance by one of several joint debtors, 28-1-1102.

Effect of release of some but not all joint debtors, 28-1-1603.

Part 4

Conditional Obligations

28-1-401. What obligations are conditional. An obligation is conditional when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

History: En. Sec. 1950, Civ. C. 1895; re-en. Sec. 4898, Rev. C. 1907; re-en. Sec. 7400, R.C.M. 1921; Cal. Civ. C. Sec. 1434; Field Civ. C. Sec. 676; re-en. Sec. 7400, R.C.M. 1935; R.C.M. 1947, 58-204.

Cross-References

Obligation — definition, 28-1-101.

How obligations arise, 28-1-102.

28-1-402. Types of conditions. Conditions may be precedent, concurrent, or subsequent.

History: En. Sec. 1951, Civ. C. 1895; re-en. Sec. 4899, Rev. C. 1907; re-en. Sec. 7401, R.C.M. 1921; Cal. Civ. C. Sec. 1435; Field Civ. C. Sec. 677; re-en. Sec. 7401, R.C.M. 1935; R.C.M. 1947, 58-205.

28-1-403. Condition precedent defined. A condition precedent is one which is to be performed before some right dependent thereon accrues or some act dependent thereon is performed.

History: En. Sec. 1952, Civ. C. 1895; re-en. Sec. 4900, Rev. C. 1907; re-en. Sec. 7402, R.C.M. 1921; Cal. Civ. C. Sec. 1436; Field Civ. C. Sec. 678; re-en. Sec. 7402, R.C.M. 1935; R.C.M. 1947, 58-206.

Cross-References

Conditions precedent, Rule 9(c), M.R.Civ.P. (see Title 25, ch. 20).

Parties who cannot obtain specific performance, 27-1-416.

Condition precedent requiring wrongful act, 70-1-403.

28-1-404. Condition concurrent defined. Conditions concurrent are those which are mutually dependent and are to be performed at the same time.

History: En. Sec. 1953, Civ. C. 1895; re-en. Sec. 4901, Rev. C. 1907; re-en. Sec. 7403, R.C.M. 1921; Cal. Civ. C. Sec. 1437; Field Civ. C. Sec. 679; re-en. Sec. 7403, R.C.M. 1935; R.C.M. 1947, 58-207.

28-1-405. Condition subsequent defined. A condition subsequent is one referring to a future event upon the happening of which the obligation becomes no longer binding upon the other party if he chooses to avail himself of the condition.

History: En. Sec. 1954, Civ. C. 1895; re-en. Sec. 4902, Rev. C. 1907; re-en. Sec. 7404, R.C.M. 1921; Cal. Civ. C. Sec. 1438; Field Civ. C. Sec. 680; re-en. Sec. 7404, R.C.M. 1935; R.C.M. 1947, 58-208.

28-1-406. What conditions must be performed before requiring performance by another. Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by 28-1-407.

History: En. Sec. 1955, Civ. C. 1895; re-en. Sec. 4903, Rev. C. 1907; re-en. Sec. 7405, R.C.M. 1921; Cal. Civ. C. Sec. 1439; Field Civ. C. Sec. 681; re-en. Sec. 7405, R.C.M. 1935; R.C.M. 1947, 58-209.

Cross-References

Right to specific performance to be mutual, 27-1-414.

28-1-407. When prior performance of conditions excused. If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former.

History: En. Sec. 1956, Civ. C. 1895; re-en. Sec. 4904, Rev. C. 1907; re-en. Sec. 7406, R.C.M. 1921; Cal. Civ. C. Sec. 1440; Field Civ. C. Sec. 682; re-en. Sec. 7406, R.C.M. 1935; R.C.M. 1947, 58-210.

Cross-References

Enforcement of obligations arising by operation of law, 28-1-203.

Excuse by failure of presupposed conditions, 30-2-615.

28-1-408. Condition involving forfeiture to be strictly construed. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

History: En. Sec. 1958, Civ. C. 1895; re-en. Sec. 4906, Rev. C. 1907; re-en. Sec. 7408, R.C.M. 1921; Cal. Civ. C. Sec. 1442; Field Civ. C. Sec. 684; re-en. Sec. 7408, R.C.M. 1935; R.C.M. 1947, 58-212.

Cross-References

Construction of terms, 1-4-107.

What rules govern interpretation of contracts and other obligations, 28-1-103.

Part 5

Alternative Obligations

28-1-501. Who may select between alternative performances. If an obligation requires the performance of one of two acts in the alternative, the party required to perform has the right of selection unless it is otherwise provided by the terms of the obligation.

History: En. Sec. 1970, Civ. C. 1895; re-en. Sec. 4907, Rev. C. 1907; re-en. Sec. 7409, R.C.M. 1921; Cal. Civ. C. Sec. 1448; Field Civ. C. Sec. 685; re-en. Sec. 7409, R.C.M. 1935; R.C.M. 1947, 58-213.

Cross-References

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

U.C.C. — sales — revocation of acceptance in whole or part, 30-2-608.

28-1-502. How right of selection lost. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

History: En. Sec. 1971, Civ. C. 1895; re-en. Sec. 4908, Rev. C. 1907; re-en. Sec. 7410, R.C.M. 1921; Cal. Civ. C. Sec. 1449; Field Civ. C. Sec. 686; re-en. Sec. 7410, R.C.M. 1935; R.C.M. 1947, 58-214.

Cross-References

Time of performance when not specified, 28-3-601.

U.C.C. — sales — absence of specific time provisions, 30-2-309.

28-1-503. One alternative to be selected in its entirety. The party having the right of selection between alternative acts must select one of them in its entirety and cannot select part of one and part of another without the consent of the other party.

History: En. Sec. 1972, Civ. C. 1895; re-en. Sec. 4909, Rev. C. 1907; re-en. Sec. 7411, R.C.M. 1921; Cal. Civ. C. Sec. 1450; Field Civ. C. Sec. 687; re-en. Sec. 7411, R.C.M. 1935; R.C.M. 1947, 58-215.

Cross-References

Offer of partial performance ineffective, 28-1-1203.

28-1-504. When obligation to be interpreted as though a particular alternative did not exist. If one of the alternative acts required by an obligation is such as the law will not enforce or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other or others stood alone.

History: En. Sec. 1973, Civ. C. 1895; re-en. Sec. 4910, Rev. C. 1907; re-en. Sec. 7412, R.C.M. 1921; Cal. Civ. C. Sec. 1451; Field Civ. C. Sec. 688; re-en. Sec. 7412, R.C.M. 1935; R.C.M. 1947, 58-216; amd. Sec. 2, Ch. 117, L. 1979.

Cross-References

What rules govern interpretation of contracts and other obligations, 28-1-103.

Illegal objects and provisions, Title 28, ch. 2, part 7.

Parts 6 through 9 reserved

Part 10

Transfer of Rights and Duties Under Obligation

Part Cross-References

Registration of public obligations, Title 17, ch. 5, part 11.

Survival of cause of action or defense — death or disability or transfer of interest, 27-1-501.

Survival of counterclaim — death or assignment, 27-1-502.

What defenses to action survive assignment of right to action, 27-1-503.

U.C.C. — sales, delegation of performance — assignment of rights, 30-2-210.

U.C.C. — sales, power to transfer, 30-2-403.

U.C.C. — commercial paper, transfer and negotiation, Title 30, ch. 3, part 2.

U.C.C. — letters of credit, transfer and assignment, 30-5-116.

U.C.C. — bulk transfers, Title 30, ch. 6.

U.C.C. — investment securities, warranties on presentment and transfer, 30-8-306.

Fiduciary security transfers, Title 30, ch. 10, part 4.

Transfer of property, Title 70, ch. 1, part 5.

28-1-1001. Rights arising out of obligation transferable. A right arising out of an obligation is the property of the person to whom it is due and may be transferred as such.

History: En. Sec. 1981, Civ. C. 1895; re-en. Sec. 4912, Rev. C. 1907; re-en. Sec. 7414, R.C.M. 1921; Cal. Civ. C. Sec. 1458; Field Civ. C. Sec. 690; re-en. Sec. 7414, R.C.M. 1935; R.C.M. 1947, 58-302.

Cross-References

Kinds of novation, 28-1-1502.

28-1-1002. When burden of obligation may be transferred. The burden of an obligation may be transferred with the consent of the party entitled to its benefits, but not otherwise, except as provided by Title 70, chapter 17, part 2.

History: En. Sec. 1980, Civ. C. 1895; re-en. Sec. 4911, Rev. C. 1907; re-en. Sec. 7413, R.C.M. 1921; Cal. Civ. C. Sec. 1457; Field Civ. C. Sec. 689; re-en. Sec. 7413, R.C.M. 1935; R.C.M. 1947, 58-301; amd. Sec. 3, Ch. 117, L. 1979.

Cross-References

Kinds of novation, 28-1-1502.

Voluntary transfer — applicability of contract rules, 70-1-502.

Part 11

Extinction of Obligation by Performance

Part Cross-References

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

28-1-1101. Extinction of obligation by full performance. Full performance of an obligation by the party whose duty it is to perform it or by any other person on his behalf and with his assent, if accepted by the creditor, extinguishes it.

History: En. Sec. 2000, Civ. C. 1895; re-en. Sec. 4922, Rev. C. 1907; re-en. Sec. 7424, R.C.M. 1921; Cal. Civ. C. Sec. 1473; Field Civ. C. Sec. 699; re-en. Sec. 7424, R.C.M. 1935; R.C.M. 1947, 58-401.

Cross-References

Specific performance, 27-1-411 through 27-1-421.

Extinction of contracts, 28-2-1701.

28-1-1102. Performance by one of several joint debtors. Performance of an obligation by one of several persons who are jointly liable under it extinguishes the liability of all.

History: En. Sec. 2001, Civ. C. 1895; re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. 7425, R.C.M. 1921; Cal. Civ. C. Sec. 1474; Field Civ. C. Sec. 700; re-en. Sec. 7425, R.C.M. 1935; R.C.M. 1947, 58-402.

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Right to contribution from joint debtors, 28-1-303.

28-1-1103. Performance to one of several joint creditors. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership, which is regulated by Title 70, chapter 6.

History: En. Sec. 2002, Civ. C. 1895; re-en. Sec. 4924, Rev. C. 1907; re-en. Sec. 7426, R.C.M. 1921; Cal. Civ. C. Sec. 1475; Field Civ. C. Sec. 701; re-en. Sec. 7426, R.C.M. 1935; R.C.M. 1947, 58-403; amd. Sec. 4, Ch. 117, L. 1979.

Cross-References

Joint obligations, Title 28, ch. 1, part 3.

Creditor defined, 31-2-102.

Relative rights of different creditors, 31-2-105.

28-1-1104. Extinction when directions of creditor followed. If a creditor or any one of two or more joint creditors at any time directs the debtor to perform his obligations in a particular manner, the obligation is extinguished by performance in that manner even though the creditor does not receive the benefit of such performance.

History: En. Sec. 2003, Civ. C. 1895; re-en. Sec. 4925, Rev. C. 1907; re-en. Sec. 7427, R.C.M. 1921; Cal. Civ. C. Sec. 1476; Field Civ. C. Sec. 702; re-en. Sec. 7427, R.C.M. 1935; R.C.M. 1947, 58-404.

28-1-1105. When partial performance extinguishes part of obligation. Partial performance of an indivisible obligation extinguishes a corresponding proportion thereof if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

History: En. Sec. 2004, Civ. C. 1895; re-en. Sec. 4926, Rev. C. 1907; re-en. Sec. 7428, R.C.M. 1921; Cal. Civ. C. Sec. 1477; Field Civ. C. Sec. 703; re-en. Sec. 7428, R.C.M. 1935; R.C.M. 1947, 58-405.

Cross-References

Offer of partial performance ineffective, 28-1-1203.

When part performance extinguishes obligation, 28-1-1403.

Effect of part performance on guarantor's liability, 28-11-216.

U.C.C. — sales — revocation of acceptance in whole or in part, 30-2-608.

28-1-1106. Application of performance when there are several obligations. Whenever a debtor under several obligations to another does an act by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be so applied.

(2) If no such intention or desire is then manifested, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation performance of which was due to him from the debtor at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion. An application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If application is not made as prescribed in subsection (1) or (2) within the time prescribed, the performance must be applied to the extinction of obligations in the following order and, if there is more than one obligation of a particular class, to the extinction of all in that class, ratably:

(a) first—interest due at the time of the performance;

(b) second—principal due at that time;

(c) third—the obligation earliest in date of maturity;

(d) fourth—an obligation not secured by a lien or collateral undertaking;

(e) fifth—an obligation secured by a lien or collateral undertaking.

History: En. Sec. 2006, Civ. C. 1895; re-en. Sec. 4928, Rev. C. 1907; re-en. Sec. 7430, R.C.M. 1921; Cal. Civ. C. Sec. 1479; Based on Field Civ. C. Sec. 705; re-en. Sec. 7430, R.C.M. 1935; R.C.M. 1947, 58-407; amd. Sec. 5, Ch. 117, L. 1979.

Cross-References

Intention of the parties, Title 28, ch. 3, part 3.

Rules of priority — security interests, Title 30, ch. 9, part 3.

Liens, Title 71, ch. 3.

28-1-1107 through 28-1-1110 reserved.

28-1-1111. Receipt for money, instrument, or property delivered. Whoever pays money or delivers an instrument or property is entitled to a written receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery.

History: (1)En. Sec. 3411, C. Civ. Proc. 1895; re-en. Sec. 8037, Rev. C. 1907; re-en. Sec. 10681, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2075; re-en. Sec. 10681, R.C.M. 1935; Sec. 93-2201-2, R.C.M. 1947; (2)En. Sec. 2034, Civ. C. 1895; re-en. Sec. 4943, Rev. C. 1907; re-en. Sec. 7445, R.C.M. 1921; Cal. Civ. C. Sec. 1499; Field Civ. C. Sec. 720; re-en. Sec. 7445, R.C.M. 1935; Sec. 58-422, R.C.M. 1947; R.C.M. 1947, 58-422, 93-2201-2; amd. Sec. 6, Ch. 117, L. 1979.

Cross-References

U.C.C. — sales — when documents deliverable on acceptance — when on payment, 30-2-514.

Warehouse receipts, Title 30, ch. 7.

Notice and receipt of payment for retail installment sales, 31-1-236.

28-1-1112. Objections to tender — waiver. The person to whom a tender is made must at the time specify any objection he may have to the money, instrument, or property or he must be deemed to have waived it; and if the objections be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires or be precluded from objecting afterward.

History: En. Sec. 3412, C. Civ. Proc. 1895; re-en. Sec. 8038, Rev. C. 1907; re-en. Sec. 10682, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2076; re-en. Sec. 10682, R.C.M. 1935; R.C.M. 1947, 93-2201-3.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

U.C.C. — sales — effect of seller's tender — delivery on condition, 30-2-507.

28-1-1113. Creditor's retention of thing which he refuses to accept. If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand but, if he retains it, he is a gratuitous depositary thereof.

History: En. Sec. 2040, Civ. C. 1895; re-en. Sec. 4949, Rev. C. 1907; re-en. Sec. 7451, R.C.M. 1921; Cal. Civ. C. Sec. 1505; Field Civ. C. Sec. 726; re-en. Sec. 7451, R.C.M. 1935; R.C.M. 1947, 58-428.

Cross-References

Custody of thing other than money, 28-1-1224.

Effect of refusal to accept performance before offer, 28-1-1304.

U.C.C. — sales — merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Gratuitous deposit, Title 70, ch. 6, part 3.

Part 12

Extinction of Obligation by Offer of Performance

Part Cross-References

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

28-1-1201. When obligation extinguished by offer of performance. An obligation is extinguished by an offer of performance made in conformity to the rules prescribed in this part and with intent to extinguish the obligation.

History: En. Sec. 2020, Civ. C. 1895; re-en. Sec. 4929, Rev. C. 1907; re-en. Sec. 7431, R.C.M. 1921; Cal. Civ. C. Sec. 1485; Field Civ. C. Sec. 706; re-en. Sec. 7431, R.C.M. 1935; R.C.M. 1947, 58-408.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

28-1-1202. Effect of offer. (1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

(2) An offer of payment or other performance duly made stops the running of interest on the obligation and has the same effect upon all incidents of the obligation as a performance thereof, whether or not the title to anything offered is transferred to the creditor.

History: (1)En. Sec. 3410, C. Civ. Proc. 1895; re-en. Sec. 8036, Rev. C. 1907; re-en. Sec. 10680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2074; re-en. Sec. 10680, R.C.M. 1935; Sec.

93-2201-1, R.C.M. 1947; (2)En. Sec. 2039, Civ. C. 1895; re-en. Sec. 4948, Rev. C. 1907; re-en. Sec. 7450, R.C.M. 1921; Cal. Civ. C. Sec. 1504; Field Civ. C. Sec. 725; re-en. Sec. 7450, R.C.M. 1935; Sec. 58-427, R.C.M. 1947; R.C.M. 1947, 58-427, 93-2201-1; amd. Sec. 7, Ch. 117, L. 1979.

Cross-References

Firm offer, 30-2-205.

Interest rates, Title 31, ch. 1, part 1.

28-1-1203. Offer of partial performance ineffective. An offer of partial performance is of no effect.

History: En. Sec. 2021, Civ. C. 1895; re-en. Sec. 4930, Rev. C. 1907; re-en. Sec. 7432, R.C.M. 1921; Cal. Civ. C. Sec. 1486; Field Civ. C. Sec. 707; re-en. Sec. 7432, R.C.M. 1935; R.C.M. 1947, 58-409.

Cross-References

When partial performance extinguishes part of obligation, 28-1-1105.

When part performance extinguishes obligation, 28-1-1403.

28-1-1204. Who must make offer of performance. An offer of performance must be made by the debtor or by some person on his behalf and with his assent.

History: En. Sec. 2022, Civ. C. 1895; re-en. Sec. 4931, Rev. C. 1907; re-en. Sec. 7433, R.C.M. 1921; Cal. Civ. C. Sec. 1487; Field Civ. C. Sec. 708; re-en. Sec. 7433, R.C.M. 1935; R.C.M. 1947, 58-410.

Cross-References

What acts agent may perform, 28-10-105.

28-1-1205. To whom offer must be made. An offer of performance must be made to the creditor, to any one or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation.

History: En. Sec. 2023, Civ. C. 1895; re-en. Sec. 4932, Rev. C. 1907; re-en. Sec. 7434, R.C.M. 1921; Cal. Civ. C. Sec. 1488; Based on Field Civ. C. Sec. 709; re-en. Sec. 7434, R.C.M. 1935; R.C.M. 1947, 58-411; amd. Sec. 8, Ch. 117, L. 1979.

Cross-References

What acts agent may perform, 28-10-105.

28-1-1206. Where offer may be made. In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

(1) at any place appointed by the creditor;

(2) wherever the person to whom the offer ought to be made can be found;

(3) if such person cannot, with reasonable diligence, be found within the state and within a reasonable distance from his residence or place of business or if he evades the debtor, then at his residence or place of business if the same can, with reasonable diligence, be found within the state; or

(4) if this cannot be done, then at any place within this state.

History: En. Sec. 2024, Civ. C. 1895; re-en. Sec. 4933, Rev. C. 1907; re-en. Sec. 7435, R.C.M. 1921; Cal. Civ. C. Sec. 1489; Field Civ. C. Sec. 710; re-en. Sec. 7435, R.C.M. 1935; R.C.M. 1947, 58-412.

Cross-References

U.C.C. — sales — absence of specified place for delivery, 30-2-308.

Manner of seller's tender of delivery, 30-2-503.

28-1-1207. When offer must be made. (1) Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before or afterwards.

(2) Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon reasonable demand, has refused to perform.

History: (1)En. Sec. 2025, Civ. C. 1895; re-en. Sec. 4934, Rev. C. 1907; re-en. Sec. 7436, R.C.M. 1921; Cal. Civ. C. Sec. 1490; Field Civ. C. Sec. 711; re-en. Sec. 7436, R.C.M. 1935; Sec. 58-413, R.C.M. 1947; (2)En. Sec. 2026, Civ. C. 1895; re-en. Sec. 4935, Rev. C. 1907; re-en. Sec. 7437, R.C.M. 1921; Cal. Civ. C. Sec. 1491; Field Civ. C. Sec. 712; re-en. Sec. 7437, R.C.M. 1935; Sec. 58-414, R.C.M. 1947; R.C.M. 1947, 58-413, 58-414.

Cross-References

Time of performance when not specified, 28-3-601.

U.C.C. — sales — absence of specific time provisions, 30-2-309.

28-1-1208. Offer of late performance with compensation. Where delay in performance is capable of exact and entire compensation and time has not been expressly declared to be of the essence of the obligation, an offer of performance accompanied with an offer of such compensation may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime.

History: En. Sec. 2027, Civ. C. 1895; re-en. Sec. 4936, Rev. C. 1907; re-en. Sec. 7438, R.C.M. 1921; Cal. Civ. C. Sec. 1492; Field Civ. C. Sec. 713; re-en. Sec. 7438, R.C.M. 1935; R.C.M. 1947, 58-415.

Cross-References

Cure by seller of improper tender or delivery — replacement, 30-2-508.

28-1-1209. Offer to be made in good faith. An offer of performance must be made in good faith and in such manner as is most likely, under the circumstances, to benefit the creditor.

History: En. Sec. 2028, Civ. C. 1895; re-en. Sec. 4937, Rev. C. 1907; re-en. Sec. 7439, R.C.M. 1921; Cal. Civ. C. Sec. 1493; Field Civ. C. Sec. 714; re-en. Sec. 7439, R.C.M. 1935; R.C.M. 1947, 58-416.

Cross-References

U.C.C. — good faith defined, 30-1-201.

Effect of seller's tender — delivery on condition, 30-2-507.

28-1-1210. Offeror to be able and willing to perform. An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

History: En. Sec. 2030, Civ. C. 1895; re-en. Sec. 4939, Rev. C. 1907; re-en. Sec. 7441, R.C.M. 1921; Cal. Civ. C. Sec. 1495; Field Civ. C. Sec. 716; re-en. Sec. 7441, R.C.M. 1935; R.C.M. 1947, 58-418.

Cross-References

Effect of seller's tender — delivery on condition, 30-2-507.

Right to adequate assurance of performance, 30-2-609.

28-1-1211. When offer may be conditional. (1) An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform.

(2) When a debtor is entitled to the performance of a condition precedent to or concurrent with performance on his part, he may make his offer depend upon the due performance of such condition.

History: En. Secs. 2029, 2033, Civ. C. 1895; re-en. Secs. 4938, 4942, Rev. C. 1907; re-en. Secs. 7440, 7444, R.C.M. 1921; Cal. Civ. C. Secs. 1494, 1498; Field Civ. C. Secs. 715, 719; re-en. Secs. 7440, 7444, R.C.M. 1935; R.C.M. 1947, 58-417, 58-421.

Cross-References

Condition precedent, 28-1-403.

Condition concurrent, 28-1-404.

How proposal revoked, 28-2-512.

U.C.C. — title, creditors, and good faith purchasers, Title 30, ch. 2, part 4.

28-1-1212. Objections to mode of offer — waiver. All objections to the mode of an offer of performance which the creditor has an opportunity to state at the time to the person making the offer and which could then be obviated by such person are waived by the creditor if not then stated. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property offered, the creditor must specify the amount, terms, or kind which he requires.

History: En. Sec. 2036, Civ. C. 1895; re-en. Sec. 4945, Rev. C. 1907; re-en. Sec. 7447, R.C.M. 1921; Cal. Civ. C. Sec. 1501; Field Civ. C. Sec. 722; re-en. Sec. 7447, R.C.M. 1935; R.C.M. 1947, 58-424; amd. Sec. 9, Ch. 117, L. 1979.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

Waiver of buyer's objections by failure to particularize, 30-2-605.

28-1-1213 through 28-1-1220 reserved.

28-1-1221. Title to thing offered. The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor at the time signifies his intention to that effect.

History: En. Sec. 2037, Civ. C. 1895; re-en. Sec. 4946, Rev. C. 1907; re-en. Sec. 7448, R.C.M. 1921; Cal. Civ. C. Sec. 1502; Field Civ. C. Sec. 723; re-en. Sec. 7448, R.C.M. 1935; R.C.M. 1947, 58-425.

Cross-References

Passing of title, 30-2-401.

Manner of seller's tender of delivery, 30-2-503.

28-1-1222. Production of thing to be delivered. The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance unless the offer is accepted.

History: En. Sec. 2031, Civ. C. 1895; re-en. Sec. 4940, Rev. C. 1907; re-en. Sec. 7442, R.C.M. 1921; Cal. Civ. C. Sec. 1496; Field Civ. C. Sec. 717; re-en. Sec. 7442, R.C.M. 1935; R.C.M. 1947, 58-419.

Cross-References

U.C.C. — sales — options and cooperation respecting performance, 30-2-311.

28-1-1223. Thing offered to be kept separate. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

History: En. Sec. 2032, Civ. C. 1895; re-en. Sec. 4941, Rev. C. 1907; re-en. Sec. 7443, R.C.M. 1921; Cal. Civ. C. Sec. 1497; Field Civ. C. Sec. 718; re-en. Sec. 7443, R.C.M. 1935; R.C.M. 1947, 58-420.

Cross-References

Casualty to identified goods, 30-2-613.

28-1-1224. Custody of thing other than money. The person offering a thing other than money by way of performance must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire until the creditor accepts it or until he has given reasonable notice to the creditor that he will retain it no longer and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

History: **En. Sec. 2038, Civ. C. 1895; re-en. Sec. 4947, Rev. C. 1907; re-en. Sec. 7449, R.C.M. 1921; Cal. Civ. C. Sec. 1503; Field Civ. C. Sec. 724; re-en. Sec. 7449, R.C.M. 1935; R.C.M. 1947, 58-426.**

Cross-References

Creditor's retention of thing which he refuses to accept, 28-1-1113.

U.C.C. — sales — merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Buyer's security interest in rejected goods, 30-2-711.

Deposit for hire, Title 70, ch. 6, part 4.

28-1-1225. Deposit of money offered in payment. An obligation for the payment of money is extinguished by a due offer of payment if the amount is immediately deposited in the name of the creditor with some bank of deposit within this state of good repute and notice thereof is given to the creditor.

History: **En. Sec. 2035, Civ. C. 1895; re-en. Sec. 4944, Rev. C. 1907; re-en. Sec. 7446, R.C.M. 1921; Cal. Civ. C. Sec. 1500; Field Civ. C. Sec. 721; re-en. Sec. 7446, R.C.M. 1935; R.C.M. 1947, 58-423.**

Cross-References

U.C.C. — sales — tender of payment by buyer — payment by check, 30-2-511.

Liquidation or limitation of damages — deposits, 30-2-718.

Part 13

Prevention of Performance

Part Cross-References

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

28-1-1301. When delay or failure to perform or offer to perform excused. The want of performance of an obligation or of an offer of performance, in whole or in part, or any delay therein is excused by the following causes, to the extent to which they operate:

(1) when such performance or offer is prevented or delayed by the act of the creditor or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

(2) when it is prevented or delayed by an irresistible, superhuman cause or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or

(3) when the debtor is induced not to make it by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

History: **En. Sec. 2050, Civ. C. 1895; re-en. Sec. 4950, Rev. C. 1907; re-en. Sec. 7452, R.C.M. 1921; Cal. Civ. C. Sec. 1511; Field Civ. C. Sec. 727; re-en. Sec. 7452, R.C.M. 1935; R.C.M. 1947, 58-429.**

Cross-References

Offer of late performance with compensation, 28-1-1208.

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Excuse by failure of presupposed conditions, 30-2-615.

28-1-1302. Effect when performance prevented by creditor. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

History: **En. Sec. 2051, Civ. C. 1895; re-en. Sec. 4951, Rev. C. 1907; re-en. Sec. 7453, R.C.M. 1921; Cal. Civ. C. Sec. 1512; Field Civ. C. Sec. 728; re-en. Sec. 7453, R.C.M. 1935; R.C.M. 1947, 58-430.**

Cross-References

Right to adequate assurance of performance, 30-2-609.

U.C.C. — sales — buyer's remedies in general, 30-2-711.

28-1-1303. Effect when performance prevented by other causes. If full performance of an obligation is prevented by any cause excusing performance other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

History: **En. Sec. 2052, Civ. C. 1895; re-en. Sec. 4952, Rev. C. 1907; re-en. Sec. 7454, R.C.M. 1921; Cal. Civ. C. Sec. 1514; re-en. Sec. 7454, R.C.M. 1935; R.C.M. 1947, 58-431; amd. Sec. 10, Ch. 117, L. 1979.**

Cross-References

Excuse by failure of presupposed conditions, 30-2-615.

28-1-1304. Effect of refusal to accept performance before offer. A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

History: **En. Sec. 2053, Civ. C. 1895; re-en. Sec. 4953, Rev. C. 1907; re-en. Sec. 7455, R.C.M. 1921; Cal. Civ. C. Sec. 1515; Field Civ. C. Sec. 731; re-en. Sec. 7455, R.C.M. 1935; R.C.M. 1947, 58-432.**

Cross-References

Extinction of obligation by full performance, 28-1-1101.

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Anticipatory repudiation, 30-2-610.

Retraction of anticipatory repudiation, 30-2-611.

Part 14

Accord and Satisfaction

Part Cross-References

Compromise or settlement of a debt by unsealed writing, 1-4-207.

28-1-1401. Accord — definition and effect. An accord is an agreement to accept in extinction of an obligation something different from or less than that to which the person agreeing to accept is entitled. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

History: **Ap. p. Sec. 2060, Civ. C. 1895; re-en. Sec. 4954, Rev. C. 1907; re-en. Sec. 7456, R.C.M. 1921; Cal. Civ. C. Sec. 1521; Based on Field Civ. C. Sec. 732; re-en. Sec. 7456, R.C.M. 1935; Sec. 58-501, R.C.M. 1947; Ap. p. Sec. 2061, Civ. C. 1895; re-en. Sec. 4955, Rev. C. 1907; re-en. Sec. 7457, R.C.M. 1921; Cal. Civ. C. Sec. 1522; Field Civ. C. Sec. 733; re-en. Sec. 7457, R.C.M. 1935; Sec. 58-502, R.C.M. 1947; R.C.M. 1947, 58-501, 58-502.**

Cross-References

U.C.C. — sales — substituted performance, 30-2-614.

28-1-1402. Satisfaction — definition and effect. Acceptance by the creditor of the consideration of an accord extinguishes the obligation and is called satisfaction.

History: **En. Sec. 2062, Civ. C. 1895; re-en. Sec. 4956, Rev. C. 1907; re-en. Sec. 7458, R.C.M. 1921; Cal. Civ. C. Sec. 1523; Field Civ. C. Sec. 734; re-en. Sec. 7458, R.C.M. 1935; R.C.M. 1947, 58-503.**

Cross-References

U.C.C. — sales — substituted performance, 30-2-614.

28-1-1403. When part performance extinguishes obligation. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

History: **En. Sec. 2063, Civ. C. 1895; re-en. Sec. 4957, Rev. C. 1907; re-en. Sec. 7459, R.C.M. 1921; Cal. Civ. C. Sec. 1524; re-en. Sec. 7459, R.C.M. 1935; R.C.M. 1947, 58-504.**

Cross-References

When partial performance extinguishes part of obligation, 28-1-1105.

Offer of partial performance ineffective, 28-1-1203.

Effect of part performance on guarantor's liability, 28-11-216.

U.C.C. — sales — substituted performance, 30-2-614.

Part 15

Novation

Part Cross-References

Contracts, Title 28, ch. 2.

Interpretation of contracts, Title 28, ch. 3.

28-1-1501. Novation defined. "Novation" is the substitution of a new obligation for an existing one.

History: **En. Sec. 2070, Civ. C. 1895; re-en. Sec. 4958, Rev. C. 1907; re-en. Sec. 7460, R.C.M. 1921; Cal. Civ. C. Sec. 1530; Field Civ. C. Sec. 736; re-en. Sec. 7460, R.C.M. 1935; R.C.M. 1947, 58-505.**

28-1-1502. Kinds of novation. Novation is made by the substitution of:

(1) a new obligation between the same parties with intent to extinguish the old obligation;

(2) a new debtor in place of the old one with intent to release the latter; or

(3) a new creditor in place of the old one with intent to transfer the rights of the latter to the former.

History: En. Sec. 2071, Civ. C. 1895; re-en. Sec. 4959, Rev. C. 1907; re-en. Sec. 7461, R.C.M. 1921; Cal. Civ. C. Sec. 1531; Field Civ. C. Sec. 737; re-en. Sec. 7461, R.C.M. 1935; R.C.M. 1947, 58-506.

Cross-References

One alternative to be selected in its entirety, 28-1-503.

Rights arising out of obligation transferable, 28-1-1001.

When burden of obligation may be transferred, 28-1-1002.

U.C.C. — sales — delegation of performance — assignment of rights, 30-2-210.

28-1-1503. How novation accomplished. Novation is made by contract and is subject to all the rules concerning contracts in general.

History: En. Sec. 2072, Civ. C. 1895; re-en. Sec. 4960, Rev. C. 1907; re-en. Sec. 7462, R.C.M. 1921; Cal. Civ. C. Sec. 1532; Field Civ. C. Sec. 738; re-en. Sec. 7462, R.C.M. 1935; R.C.M. 1947, 58-507.

Cross-References

What rules govern interpretation of contracts and other obligations, 28-1-103.

How contract extinguished, 28-2-1701.

28-1-1504. When acceptance of novation may be rescinded. When the obligation of a third person or an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if:

(1) the debtor prevents such person from complying with the order or from fulfilling the obligation;

(2) at the time the obligation or order is received, such person is insolvent and the fact is unknown to the creditor; or

(3) before the creditor can, with reasonable diligence, present the order to the person upon whom it is given, he becomes insolvent.

History: En. Sec. 2073, Civ. C. 1895; re-en. Sec. 4961, Rev. C. 1907; re-en. Sec. 7463, R.C.M. 1921; Cal. Civ. C. Sec. 1533; Based on Field Civ. C. Sec. 740; re-en. Sec. 7463, R.C.M. 1935; R.C.M. 1947, 58-508.

Cross-References

How rescission accomplished, 28-2-1713.

Modification, rescission and waiver, 30-2-209.

Part 16

Release of Debtor by Creditor

28-1-1601. Extinction of obligation by a release. An obligation is extinguished by a release therefrom given to the debtor by the creditor upon a new consideration or in writing, with or without new consideration.

History: En. Sec. 2080, Civ. C. 1895; re-en. Sec. 4962, Rev. C. 1907; re-en. Sec. 7464, R.C.M. 1921; Cal. Civ. C. Sec. 1541; Based on Field Civ. C. Sec. 741; re-en. Sec. 7464, R.C.M. 1935; R.C.M. 1947, 58-509.

Cross-References

Discharge of one joint debtor, 25-15-201.

28-1-1602. What claims survive general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor.

History: En. Sec. 2081, Civ. C. 1895; re-en. Sec. 4963, Rev. C. 1907; re-en. Sec. 7465, R.C.M. 1921; Cal. Civ. C. Sec. 1542; Based on Field Civ. C. Sec. 742; re-en. Sec. 7465, R.C.M. 1935; R.C.M. 1947, 58-510.

Cross-References

Mistake, 28-2-408 through 28-2-411.

28-1-1603. Effect of release of some but not all joint debtors. A release of one of two or more joint debtors does not extinguish the obligation of any of the others unless they are mere guarantors, nor does it affect their rights to contribution from him.

History: En. Sec. 2082, Civ. C. 1895; re-en. Sec. 4964, Rev. C. 1907; re-en. Sec. 7466, R.C.M. 1921; Cal. Civ. C. Sec. 1543; Field Civ. C. Sec. 743; re-en. Sec. 7466, R.C.M. 1935; R.C.M. 1947, 58-511.

Cross-References

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CHAPTER 2

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28-2-101. Contract defined. A contract is an agreement to do or not to do a certain thing.

History: En. Sec. 2090, Civ. C. 1895; re-en. Sec. 4965, Rev. C. 1907; re-en. Sec. 7467, R.C.M. 1921; Cal. Civ. C. Sec. 1549; Field Civ. C. Sec. 744; re-en. Sec. 7467, R.C.M. 1935; R.C.M. 1947, 13-101.

Cross-References

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.
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How liens created, 71-3-102.
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28-2-102. Essential elements of a contract. It is essential to the existence of a contract that there be:

(1) identifiable parties capable of contracting;
(2) their consent;
(3) a lawful object; and
(4) a sufficient cause or consideration.

History: En. Secs. 2091, 2102, Civ. C. 1895; re-en. Secs. 4966, 4969, Rev. C. 1907; re-en. Secs. 7468, 7471, R.C.M. 1921; Cal. Civ. C. Secs. 1550, 1558; Field Civ. C. Secs. 745, 748; re-en. Secs. 7468, 7471, R.C.M. 1935; R.C.M. 1947, 13-102, 13-203; amd. Sec. 11, Ch. 117, L. 1979.

Cross-References

Ratification of contract void for want of consent, 28-2-304.
What is unlawful, 28-2-701.
Form, formation, and readjustment of contract, Title 30, ch. 2, part 2.
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Requirements of retail installment contracts, 31-1-231.
Employment agency — required contents of contract, 39-5-302.
Minors — power to contract, Title 41, ch. 1, part 3.

28-2-103. Express versus implied contracts. A contract is either express or implied. An express contract is one the terms of which are stated in words. An implied contract is one the existence and terms of which are manifested by conduct.

History: **En. Secs. 2180, 2181, 2182, Civ. C. 1895; re-en. Secs. 5012, 5013, 5014, Rev. C. 1907; re-en. Secs. 7514, 7515, 7516, R.C.M. 1921; Cal. Civ. C. Secs. 1619, 1620, 1621; Field Civ. C. Secs. 789, 790, 791; re-en. Secs. 7514, 7515, 7516, R.C.M. 1935; R.C.M. 1947, 13-601, 13-602, 13-603.**

Cross-References

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Formation in general, U.C.C. contracts, 30-2-204.

U.C.C. — sales contracts — course of performance or practical construction, 30-2-208.

28-2-104. Executed versus executory contracts. An executed contract is one the object of which is fully performed. All others are executory.

History: **En. Sec. 2226, Civ. C. 1895; re-en. Sec. 5050, Rev. C. 1907; re-en. Sec. 7552, R.C.M. 1921; Cal. Civ. C. Sec. 1661; Field Civ. C. Sec. 826; re-en. Sec. 7552, R.C.M. 1935; R.C.M. 1947, 13-727.**

Cross-References

Execution defined, 1-1-203.

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Specific performance by party who signed when other party did not sign contract, 27-1-417.

General obligations of parties, U.C.C. contracts, 30-2-301.

Contracts of marriage — parts of code not applicable, 40-1-106.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Discrimination in credit transactions, 49-2-403.

28-2-201. Who may contract. All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. Minors and persons of unsound mind have only such capacity as is defined by this part, 28-10-104, and Title 41, chapter 1.

History: **En. Secs. 2100, 2101, Civ. C. 1895; re-en. Secs. 4967, 4968, Rev. C. 1907; re-en. Secs. 7469, 7470, R.C.M. 1921; Cal. Civ. C. Secs. 1556, 1557; Field Civ. C. Secs. 746, 747; re-en. Secs. 7469, 7470, R.C.M. 1935; R.C.M. 1947, 13-201, 13-202; amd. Sec. 12, Ch. 117, L. 1979.**

Cross-References

County contracts, Title 7, ch. 5, part 23.

Municipal contracts, Title 7, ch. 5, part 43.

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Reclamation contracts by Board of Land Commissioners, 82-4-239, 82-4-403.

Department of Commerce — contracts for planning and economic development programs, 90-1-107.

28-2-202. Contracts of persons entirely without understanding. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

History: En. Sec. 21, Civ. C. 1895; re-en. Sec. 3595, Rev. C. 1907; re-en. Sec. 5683, R.C.M. 1921; Cal. Civ. C. Sec. 38; re-en. Sec. 5683, R.C.M. 1935; re-en. Sec. 5683, R.C.M. 1935; R.C.M. 1947, 64-110.

Cross-References

Capacity, Rule 9(a), M.R.Civ.P. (see Title 25, ch. 20).

How proposal revoked — mental illness, 28-2-512.

Support of spouse, 40-2-103.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Specific limits on justification for discrimination — age or mental handicap, 49-2-403.

Mentally ill, Title 53, ch. 21.

28-2-203. Contracts of persons with limited understanding. A conveyance or other contract of a person of unsound mind but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission as provided in part 17 of this chapter.

History: En. Sec. 22, Civ. C. 1895; re-en. Sec. 3596, Rev. C. 1907; re-en. Sec. 5684, R.C.M. 1921; Cal. Civ. C. Sec. 39; Field Civ. C. Sec. 21; re-en. Sec. 5684, R.C.M. 1935; R.C.M. 1947, 64-111.

Cross-References

Capacity, Rule 9(a), M.R.Civ.P. (see Title 25, ch. 20).

How proposal revoked — mental illness, 28-2-512.

Rescission of contracts, Title 28, ch. 2, part 17.

U.C.C. — sales — modification, rescission, and waiver, 30-2-209.

Specific limits on justification for discrimination — age or mental handicap, 49-2-403.

Mentally ill, Title 53, ch. 21.

28-2-204. When person of unsound mind cannot disaffirm contract. A person of unsound mind cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part).

Cross-References

How proposal revoked — mental illness, 28-2-512.

When party may rescind, 28-2-1711.

Support of spouse, 40-2-103.

Liability for acts or debts of spouse, 40-2-106.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Specific limits on justification for discrimination — age or mental handicap, 49-2-403.

Mentally ill, Title 53, ch. 21.

28-2-205. When contract for benefit of third person may be enforced by him. A contract made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it.

History: En. Sec. 2103, Civ. C. 1895; re-en. Sec. 4970, Rev. C. 1907; re-en. Sec. 7472, R.C.M. 1921; Cal. Civ. C. Sec. 1559; Field Civ. C. Sec. 749; re-en. Sec. 7472, R.C.M. 1935; R.C.M. 1947, 13-204.

Cross-References

Rescission, Title 28, ch. 2, part 17.

U.C.C. — sales — modification, rescission, and waiver, 30-2-209.

Delegation of performance — assignment of rights, 30-2-210.

28-2-206. Assignment of nonnegotiable written contract. A nonnegotiable written contract for the payment of money or the delivery of personal property may be transferred by endorsement the same as a negotiable instrument. Such endorsement transfers all the rights of the assignor under the contract to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the endorsement or arising before notice of the assignment is received by him.

History: En. Sec. 1982, Civ. C. 1895; re-en. Sec. 4913, Rev. C. 1907; re-en. Sec. 7415, R.C.M. 1921; Cal. Civ. C. Sec. 1459; re-en. Sec. 7415, R.C.M. 1935; R.C.M. 1947, 58-303; amd. Sec. 13, Ch. 117, L. 1979.

Cross-References

Survival of cause of action or defense — death or disability or transfer of interest, 27-1-501.

Survival of counterclaim — death or assignment, 27-1-502.

What defenses to action survive assignment of right to action, 27-1-503.

Delegation of performance — assignment of rights, 30-2-210.

U.C.C. — commercial paper, transfer and negotiation, Title 30, ch. 3, part 2.

Exemption from execution of proceeds of annuity contracts — assignability of rights, 33-15-514.

Part 3

Consent in General

28-2-301. Essential characteristics of consent. The consent of the parties to a contract must be:

(1) free;

(2) mutual; and

(3) communicated by each to the other.

History: En. Sec. 2110, Civ. C. 1895; re-en. Sec. 4971, Rev. C. 1907; re-en. Sec. 7473, R.C.M. 1921; Cal. Civ. C. Sec. 1565; Field Civ. C. Sec. 750; re-en. Sec. 7473, R.C.M. 1935; R.C.M. 1947, 13-301.

Cross-References

How novation accomplished, 28-1-1503.

Formation in general — U.C.C. sales, 30-2-204.

28-2-302. Effect of consent which is not free. A consent which is not free is nevertheless not absolutely void but may be rescinded by the parties in the manner prescribed by part 17 of this chapter.

History: En. Sec. 2111, Civ. C. 1895; re-en. Sec. 4972, Rev. C. 1907; re-en. Sec. 7474, R.C.M. 1921; Cal. Civ. C. Sec. 1566; Field Civ. C. Sec. 751; re-en. Sec. 7474, R.C.M. 1935; R.C.M. 1947, 13-302.

Cross-References

When party may rescind, 28-2-1711.

U.C.C. — sales — modification, rescission, and waiver, 30-2-209.

28-2-303. When consent is mutual. Consent is not mutual unless the parties all agree upon the same thing in the same sense, but in certain cases defined by chapter 3, they are to be deemed so to agree without regard to the fact.

History: En. Sec. 2125, Civ. C. 1895; re-en. Sec. 4986, Rev. C. 1907; re-en. Sec. 7488, R.C.M. 1921; Cal. Civ. C. Sec. 1580; Field Civ. C. Sec. 765; re-en. Sec. 7488, R.C.M. 1935; R.C.M. 1947, 13-316.

Cross-References

Offer and acceptance in formation of contract, 30-2-206.

28-2-304. Ratification of contract void for want of consent. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

History: En. Sec. 2133, Civ. C. 1895; re-en. Sec. 4994, Rev. C. 1907; re-en. Sec. 7496, R.C.M. 1921; Cal. Civ. C. Sec. 1588; Field Civ. C. Sec. 773; re-en. Sec. 7496, R.C.M. 1935; R.C.M. 1947, 13-324.

Cross-References

Essential elements of a contract, 28-2-102.

Agency — ratification, 28-10-211 through 28-10-215.

Part 4

Circumstances Which Affect Validity of Apparent Consent

Part Cross-References

Parties who cannot be compelled to perform, 27-1-415.

28-2-401. When apparent consent not free. (1) An apparent consent is not real or free when obtained through:

(a) duress;

(b) menace;

(c) fraud;

(d) undue influence; or

(e) mistake.

(2) Consent is deemed to have been obtained through one of the causes mentioned in subsection (1) only when it would not have been given had such cause not existed.

History: En. Secs. 2112, 2113, Civ. C. 1895; re-en. Secs. 4973, 4974, Rev. C. 1907; re-en. Secs. 7475, 7476, R.C.M. 1921; Cal. Civ. C. Secs. 1567, 1568; Field Civ. C. Secs. 752, 753; re-en. Secs. 7475, 7476, R.C.M. 1935; R.C.M. 1947, 13-303, 13-304.

28-2-402. What constitutes duress. Duress consists in:

(1) unlawful confinement of the person of the party, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;

(2) unlawful detention of the property of any such person; or

(3) confinement of such person, lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive.

History: **En. Sec. 2114, Civ. C. 1895; re-en. Sec. 4975, Rev. C. 1907; re-en. Sec. 7477, R.C.M. 1921; Cal. Civ. C. Sec. 1569; Field Civ. C. Sec. 754; re-en. Sec. 7477, R.C.M. 1935; R.C.M. 1947, 13-305.**

Cross-References

When party may rescind, 28-2-1711.

Burdens in contested will cases, 72-3-310.

Certificate to be attached when will found valid, 72-12-204.

28-2-403. What constitutes menace. Menace consists in a threat of:

(1) such duress as is specified in subsections (1) and (3) of 28-2-402;

(2) unlawful and violent injury to the person or property of any such person in circumstances described in 28-2-402; or

(3) injury to the character of any such person.

History: **En. Sec. 2115, Civ. C. 1895; re-en. Sec. 4976, Rev. C. 1907; re-en. Sec. 7478, R.C.M. 1921; Cal. Civ. C. Sec. 1570; Field Civ. C. Sec. 755; re-en. Sec. 7478, R.C.M. 1935; R.C.M. 1947, 13-306; amd. Sec. 14, Ch. 117, L. 1979.**

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

When party may rescind, 28-2-1711.

28-2-404. Kinds of fraud. Fraud is either actual or constructive. Actual fraud is always a question of fact.

History: **En. Secs. 2116, 2119, Civ. C. 1895; re-en. Secs. 4977, 4980, Rev. C. 1907; re-en. Secs. 7479, 7482, R.C.M. 1921; Cal. Civ. C. Secs. 1571, 1574; Field Civ. C. Secs. 756, 759; re-en. Secs. 7479, 7482, R.C.M. 1935; R.C.M. 1947, 13-307, 13-310.**

Cross-References

Issues of fact, 25-7-101, 25-7-103.

Fraud, mistake, condition of the mind, Rule 9(b), M.R.Civ.P. (see Title 25, ch. 20).

Right to damages for fraud preserved, 27-1-602.

Liability for damages for deceit, 27-1-712.

Action for relief on ground of fraud or mistake, 27-2-203.

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

Remedies for fraud, 30-2-721.

Fraudulent financing of mining and oil companies, Title 30, ch. 14, part 7.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

28-2-405. What constitutes actual fraud. Actual fraud, within the meaning of this part, consists in any of the following acts committed by a party to the contract or with his connivance with intent to deceive another party thereto or to induce him to enter into the contract:

(1) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(3) the suppression of that which is true by one having knowledge or belief of the fact;

(4) a promise made without any intention of performing it; or

(5) any other act fitted to deceive.

History: En. Sec. 2117, Civ. C. 1895; re-en. Sec. 4978, Rev. C. 1907; re-en. Sec. 7480, R.C.M. 1921; Cal. Civ. C. Sec. 1572; Field Civ. C. Sec. 757; re-en. Sec. 7480, R.C.M. 1935; R.C.M. 1947, 13-308.

Cross-References

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

Fraudulent conveyances, Title 31, ch. 2, part 3.

28-2-406. What constitutes constructive fraud. Constructive fraud consists in:

(1) any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under him by misleading another to his prejudice or to the prejudice of anyone claiming under him; or

(2) any such act or omission as the law especially declares to be fraudulent, without respect to actual fraud.

History: En. Sec. 2118, Civ. C. 1895; re-en. Sec. 4979, Rev. C. 1907; re-en. Sec. 7481, R.C.M. 1921; Cal. Civ. C. Sec. 1573; Field Civ. C. Sec. 758; re-en. Sec. 7481, R.C.M. 1935; R.C.M. 1947, 13-309.

Cross-References

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

Fraudulent conveyances, Title 31, ch. 2, part 3.

28-2-407. What constitutes undue influence. Undue influence consists in:

(1) the use by one in whom a confidence is reposed by another or who holds a real or apparent authority over him of such confidence or authority for the purpose of obtaining an unfair advantage over him;

(2) taking an unfair advantage of another's weakness of mind; or

(3) taking a grossly oppressive and unfair advantage of another's necessities or distress.

History: En. Sec. 2120, Civ. C. 1895; re-en. Sec. 4981, Rev. C. 1907; re-en. Sec. 7483, R.C.M. 1921; Cal. Civ. C. Sec. 1575; Field Civ. C. Sec. 760; re-en. Sec. 7483, R.C.M. 1935; R.C.M. 1947, 13-311.

Cross-References

Undue influence of voters, 13-35-218.

Illegal election practices — undue influence, 13-36-210.

When party may rescind, 28-2-1711.

Self-proved will, no undue influence, 72-2-304.

Burden in contested will cases, 72-3-310.

Certificate to be attached if will found valid, 72-12-204.

28-2-408. Kinds of mistake. Mistake may be either of fact or law.

History: En. Sec. 2121, Civ. C. 1895; re-en. Sec. 4982, Rev. C. 1907; re-en. Sec. 7484, R.C.M. 1921; Cal. Civ. C. Sec. 1576; Field Civ. C. Sec. 761; re-en. Sec. 7484, R.C.M. 1935; R.C.M. 1947, 13-312.

Cross-References

Fraud, mistake, condition of the mind, Rule 9(b), M.R.Civ.P. (see Title 25, ch. 20).

Actions for relief on ground of fraud or mistake, 27-2-203.

28-2-409. What constitutes mistake of fact. Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in:

(1) an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or

(2) belief in the present existence of a thing material to the contract which does not exist or in the past existence of such a thing which has not existed.

History: En. Sec. 2122, Civ. C. 1895; re-en. Sec. 4983, Rev. C. 1907; re-en. Sec. 7485, R.C.M. 1921; Cal. Civ. C. Sec. 1577; Field Civ. C. Sec. 762; re-en. Sec. 7485, R.C.M. 1935; R.C.M. 1947, 13-313.

Cross-References

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

28-2-410. What constitutes mistake of law. Mistake of law constitutes a mistake, within the meaning of this part, only when it arises from:

(1) a misapprehension of the law by all parties, all supposing that they knew and understood it and all making substantially the same mistake as to the law; or

(2) a misapprehension of the law by one party of which the others are aware at the time of contracting but which they do not rectify.

History: En. Sec. 2123, Civ. C. 1895; re-en. Sec. 4984, Rev. C. 1907; re-en. Sec. 7486, R.C.M. 1921; Cal. Civ. C. Sec. 1578; Field Civ. C. Sec. 763; re-en. Sec. 7486, R.C.M. 1935; R.C.M. 1947, 13-314.

Cross-References

Meaning of law, Title 1, ch. 1, part 1.

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

28-2-411. Mistake of foreign laws — mistake of fact. Mistake of foreign laws is a mistake of fact.

History: En. Sec. 2124, Civ. C. 1895; re-en. Sec. 4985, Rev. C. 1907; re-en. Sec. 7487, R.C.M. 1921; Cal. Civ. C. Sec. 1579; Field Civ. C. Sec. 764; re-en. Sec. 7487, R.C.M. 1935; R.C.M. 1947, 13-315.

Cross-References

When party may rescind, 28-2-1711.

When stipulation against rescission ineffective, 28-2-1712.

Part 5

Communication of Consent — Revocation of Proposal

Part Cross-References

Discrimination in credit transactions, 49-2-403.

28-2-501. How consent is communicated. (1) Consent can be communicated with effect only by some act or omission of the party contracting by which he intends to communicate it or which necessarily tends to such communication.

(2) If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases, any reasonable and usual mode in conformity with subsection (1) may be adopted.

History: En. Secs. 2126, 2127, Civ. C. 1895; re-en. Secs. 4987, 4988, Rev. C. 1907; re-en. Secs. 7489, 7490, R.C.M. 1921; Cal. Civ. C. Secs. 1581, 1582; Field Civ. C. Secs. 766, 767;

re-en. Secs. 7489, 7490, R.C.M. 1935; R.C.M. 1947, 13-317, 13-318; amd. Sec. 15, Ch. 117, L. 1979.

Cross-References

Offer and acceptance in formation of contract, 30-2-206.

28-2-502. When consent is considered fully communicated. Consent is considered to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer in conformity with 28-2-501.

History: En. Sec. 2128, Civ. C. 1895; re-en. Sec. 4989, Rev. C. 1907; re-en. Sec. 7491, R.C.M. 1921; Cal. Civ. C. Sec. 1583; Field Civ. C. Sec. 768; re-en. Sec. 7491, R.C.M. 1935; R.C.M. 1947, 13-319; amd. Sec. 16, Ch. 117, L. 1979.

28-2-503. Implied acceptance. (1) Performance of the conditions of a proposal or the acceptance of the consideration offered with a proposal is an acceptance of the proposal.

(2) A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known or ought to be known to the person accepting.

History: En. Secs. 2129, 2134, Civ. C. 1895; re-en. Secs. 4990, 4995, Rev. C. 1907; re-en. Secs. 7492, 7497, R.C.M. 1921; Cal. Civ. C. Secs. 1584, 1589; Field Civ. C. Secs. 769, 774; re-en. Secs. 7492, 7497, R.C.M. 1935; R.C.M. 1947, 13-320, 13-325.

Cross-References

Offer and acceptance in formation of contract, 30-2-206.

28-2-504. Acceptance to be absolute. An acceptance must be absolute and unqualified or must include in itself an acceptance of that character which the proposer can separate from the rest and which will bind the person accepting. A qualified acceptance is a new proposal.

History: En. Sec. 2130, Civ. C. 1895; re-en. Sec. 4991, Rev. C. 1907; re-en. Sec. 7493, R.C.M. 1921; Cal. Civ. C. Sec. 1585; Field Civ. C. Sec. 770; re-en. Sec. 7493, R.C.M. 1935; R.C.M. 1947, 13-321; amd. Sec. 17, Ch. 117, L. 1979.

Cross-References

Additional terms in acceptance or confirmation, 30-2-207.

28-2-505 through 28-2-510 reserved.

28-2-511. When proposal may be revoked. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

History: En. Sec. 2131, Civ. C. 1895; re-en. Sec. 4992, Rev. C. 1907; re-en. Sec. 7494, R.C.M. 1921; Cal. Civ. C. Sec. 1586; Field Civ. C. Sec. 771; re-en. Sec. 7494, R.C.M. 1935; R.C.M. 1947, 13-322.

Cross-References

Modification, rescission and waiver, 30-2-209.

28-2-512. How proposal revoked. A proposal is revoked by:

(1) the communication of notice of revocation by the proposer to the other party in the manner prescribed by 28-2-501 and 28-2-502 before his acceptance has been communicated to the former;

(2) the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or serious mental illness of the proposer.

History: En. Sec. 2132, Civ. C. 1895; re-en. Sec. 4993, Rev. C. 1907; re-en. Sec. 7495, R.C.M. 1921; Cal. Civ. C. Sec. 1587; Field Civ. C. Sec. 772; re-en. Sec. 7495, R.C.M. 1935; R.C.M. 1947, 13-323; amd. Sec. 18, Ch. 117, L. 1979.

Cross-References

When offer may be conditional, 28-1-1211.

Who may contract, 28-2-201.

Contracts of persons entirely without understanding, 28-2-202.

Contracts of persons with limited understanding, 28-2-203.

When person of unsound mind cannot disaffirm contract, 28-2-204.

Part 6

Object of a Contract

Part Cross-References

Agreements for payment of federal sums in lieu of taxes, Title 17, ch. 3, part 3.

Contract for city-county library, 22-1-315, 22-1-316.

What may be the subject of a contract, 30-11-107.

28-2-601. Object of contract defined. The object of a contract is the thing which it is agreed on the part of the party receiving the consideration to do or not to do.

History: En. Sec. 2150, Civ. C. 1895; re-en. Sec. 4996, Rev. C. 1907; re-en. Sec. 7498, R.C.M. 1921; Cal. Civ. C. Sec. 1595; Field Civ. C. Sec. 775; re-en. Sec. 7498, R.C.M. 1935; R.C.M. 1947, 13-401.

Cross-References

Contract defined, 28-2-101.

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.

Definition of a contract — U.C.C., 30-1-201.

Firm offers, 30-2-205.

Employment agency contract to be approved by department, 39-5-303.

28-2-602. Essential characteristics of object. The object of the contract must be lawful when the contract is made and possible and ascertainable by the time the contract is to be performed. Everything is deemed possible except that which is impossible in the nature of things.

History: En. Secs. 2151, 2152, Civ. C. 1895; re-en. Secs. 4997, 4998, Rev. C. 1907; re-en. Secs. 7499, 7500, R.C.M. 1921; Cal. Civ. C. Secs. 1596, 1597; Field Civ. C. Secs. 776, 777; re-en. Secs. 7499, 7500, R.C.M. 1935; R.C.M. 1947, 13-402, 13-403.

Cross-References

Prevention of performance, Title 28, ch. 1, part 13.

What is unlawful, 28-2-701.

28-2-603. When contract wholly void. Where a contract has but a single object and such object is unlawful, whether in whole or in part, or wholly impossible of performance or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

History: En. Sec. 2153, Civ. C. 1895; re-en. Sec. 4999, Rev. C. 1907; re-en. Sec. 7501, R.C.M. 1921; Cal. Civ. C. Sec. 1598; Field Civ. C. Sec. 778; re-en. Sec. 7501, R.C.M. 1935; R.C.M. 1947, 13-404.

Cross-References

Regulation of cigarette marketing — illegal contracts, 16-10-302.

Effect of impossibility of designated exclusive method of determination, 28-2-814.

Unconscionable contract or clause, 30-2-302.

Contract discharging employer liability for negligence void, 39-2-705.

Prohibited provisions in rental agreements, 70-24-202.

28-2-604. When contract partially void. Where a contract has several distinct objects of which one at least is lawful and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

History: En. Sec. 2154, Civ. C. 1895; re-en. Sec. 5000, Rev. C. 1907; re-en. Sec. 7502, R.C.M. 1921; Cal. Civ. C. Sec. 1599; Field Civ. C. Sec. 779; re-en. Sec. 7502, R.C.M. 1935; R.C.M. 1947, 13-405.

Cross-References

Unconscionable contract or clause, 30-2-302.

Part 7

Illegal Objects and Provisions

Part Cross-References

Community college district trustees — no pecuniary interest in letting contracts, 20-15-104.

Parties who cannot be compelled to specifically perform, 27-1-415.

Cause of action for breach of promise abolished — right to damages for fraud and unjust enrichment preserved, 27-1-602.

Agreements settling or compromising abolished causes of action, 27-1-605.

Unconscionable contract or clause, 30-2-302.

Recovery on illegal contracts forbidden, 30-14-219.

Prohibited provisions in rental agreements, 70-24-202.

Certain contracts void, 71-3-109.

28-2-701. What is unlawful. That is not lawful which is:

(1) contrary to an express provision of law;

(2) contrary to the policy of express law, though not expressly prohibited; or

(3) otherwise contrary to good morals.

History: En. Sec. 2240, Civ. C. 1895; re-en. Sec. 5051, Rev. C. 1907; re-en. Sec. 7553, R.C.M. 1921; Cal. Civ. C. Sec. 1667; Field Civ. C. Sec. 827; re-en. Sec. 7553, R.C.M. 1935; R.C.M. 1947, 13-801.

Cross-References

Object of contract defined, 28-2-601.

Consideration to be lawful — effect of illegality, 28-2-803.

28-2-702. Contracts which violate policy of the law — exemption from responsibility. All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law.

History: En. Sec. 2241, Civ. C. 1895; re-en. Sec. 5052, Rev. C. 1907; re-en. Sec. 7554, R.C.M. 1921; Cal. Civ. C. Sec. 1668; Field Civ. C. Sec. 828; re-en. Sec. 7554, R.C.M. 1935; R.C.M. 1947, 13-802.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.

Contract discharging employer liability for negligence void, 39-2-705.

Wage protection — contracts in violation of part void, 39-3-208.

Prohibited provisions in rental agreements, 70-24-202.

28-2-703. Contracts in restraint of trade generally void. Any contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided for by 28-2-704 or 28-2-705, is to that extent void.

History: En. Sec. 2246, Civ. C. 1895; re-en. Sec. 5057, Rev. C. 1907; re-en. Sec. 7559, R.C.M. 1921; Cal. Civ. C. Sec. 1673; Field Civ. C. Sec. 833; re-en. Sec. 7559, R.C.M. 1935; R.C.M. 1947, 13-807.

Cross-References

Special corporate privileges — franchises or immunities prohibited, Art. II, sec. 31, Mont. Const.

Unlawful practices — trade, 30-14-103.

Unlawful restraint of trade, 30-14-205.

Recovery on illegal contracts forbidden, 30-14-219.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

28-2-704. Exception — sale of goodwill of business. (1) One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within the areas provided in subsection (2) so long as the buyer or any person deriving title to the goodwill from him carries on a like business therein.

(2) The agreement authorized in subsection (1) may apply in:

(a) the city where the principal office of the business is located;

(b) the county where the principal office of the business is located;

(c) a city in any county adjacent to the county in which the principal office of the business is located;

(d) any county adjacent to the county in which the principal office of the business is located; or

(e) any combination of the foregoing.

History: En. Sec. 2247, Civ. C. 1895; re-en. Sec. 5058, Rev. C. 1907; re-en. Sec. 7560, R.C.M. 1921; Cal. Civ. C. Sec. 1674; Field Civ. C. Sec. 834; re-en. Sec. 7560, R.C.M. 1935; R.C.M. 1947, 13-808; amd. Sec. 1, Ch. 432, L. 1983.

Cross-References

Warranty on sale of goodwill, 30-11-221.

Rules for determining existence of a partnership — no inference from receipt from sale of goodwill, 35-10-202.

28-2-705. Exception — dissolution of partnership. Partners may, upon dissolution of the partnership, agree that one or more of them may not carry on a similar business within the areas provided in 28-2-704(2).

History: En. Sec. 2248, Civ. C. 1895; re-en. Sec. 5059, Rev. C. 1907; re-en. Sec. 7561, R.C.M. 1921; Cal. Civ. C. Sec. 1675; Field Civ. C. Sec. 835; re-en. Sec. 7561, R.C.M. 1935; R.C.M. 1947, 13-809; amd. Sec. 2, Ch. 432, L. 1983.

Cross-References

Rules for determining existence of a partnership — no inference from receipt from sale of goodwill, 35-10-202.

Dissolution and winding up of partnership, Title 35, ch. 10, part 6.

28-2-706. Contracts in restraint of marriage generally void. Every contract in restraint of the marriage of any person other than a minor is void.

History: En. Sec. 2249, Civ. C. 1895; re-en. Sec. 5060, Rev. C. 1907; re-en. Sec. 7562, R.C.M. 1921; Cal. Civ. C. Sec. 1676; Field Civ. C. Sec. 836; re-en. Sec. 7562, R.C.M. 1935; R.C.M. 1947, 13-810.

Cross-References

Obligations which cannot be specifically enforced, 27-1-412.

Marriage, Title 40, ch. 1.

28-2-707. What conditions void. A condition in a contract the fulfillment of which is impossible or unlawful within the meaning of part 6 and this part or which is repugnant to the nature of the interest created by the contract is void.

History: En. Sec. 1957, Civ. C. 1895; re-en. Sec. 4905, Rev. C. 1907; re-en. Sec. 7407, R.C.M. 1921; Cal. Civ. C. Sec. 1441; Field Civ. C. Sec. 683; re-en. Sec. 7407, R.C.M. 1935; R.C.M. 1947, 58-211; amd. Sec. 19, Ch. 117, L. 1979.

Cross-References

Parties who cannot be compelled to specifically perform, 27-1-415.

What deemed impossibility in contract, 28-2-602.

Unconscionable contract or clause, 30-2-302.

28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. This section does not affect the validity of an agreement enforceable under Title 27, chapter 5.

History: En. Sec. 2245, Civ. C. 1895; re-en. Sec. 5056, Rev. C. 1907; re-en. Sec. 7558, R.C.M. 1921; Field Civ. C. Sec. 832; re-en. Sec. 7558, R.C.M. 1935; R.C.M. 1947, 13-806; amd. Sec. 24, Ch. 684, L. 1985.

Cross-References

Obligations which cannot be specifically enforced, 27-1-412.

Arbitration, Title 27, ch. 5.

U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.

28-2-709. Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default. (1) No contract in writing by which any promise to pay money is created shall contain any provision either empowering any person to enter judgment by confession against any party to the contract or empowering any person as the agent of any party to the contract to either confess judgment, accept service of process, or consent on behalf of such party to the entry of his default in any proceeding in court upon such contract. Every such provision in any such contract shall be illegal and void and shall be unenforceable in the courts of this state against any party to such contract.

(2) The term "contract", as used in this section, shall include all writings executed contemporaneously with and constituting a part of the same transaction, whether such writings be negotiable or nonnegotiable in form.

History: En. Sec. 1, Ch. 197, L. 1935; re-en. Sec. 7562.1, R.C.M. 1935; R.C.M. 1947, 13-811.

Cross-References

When and in what courts judgment may be confessed, 27-9-101.

What acts agent may perform, 28-10-105.

Delegation of performance — assignment of rights, 30-2-210.

Definition of retail installment contract, 31-1-202.

28-2-710 through 28-2-720 reserved.

28-2-721. When provision fixing liquidated damages valid. (1) Every contract by which the amount of damage to be paid or other compensation to be made for a breach of an obligation is determined in anticipation thereof is to that extent void, except as expressly provided in subsection (2).

(2) The parties to a contract may agree therein upon an amount which shall be presumed to be an amount of damage sustained by a breach thereof when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

History: En. Secs. 2243, 2244, Civ. C. 1895; re-en. Secs. 5054, 5055, Rev. C. 1907; re-en. Secs. 7556, 7557, R.C.M. 1921; Cal. Civ. C. Secs. 1670, 1671; Field Civ. C. Secs. 830, 831; re-en. Secs. 7556, 7557, R.C.M. 1935; R.C.M. 1947, 13-804, 13-805.

Cross-References

Damages — breach of contract, 27-1-311.

Liquidation or limitation of damages — deposits, 30-2-718.

Contractual modification or limitation of remedy, 30-2-719.

28-2-722. Contracts for personal services limited to two years. A contract to render personal services cannot be enforced against the employee beyond the term of 2 years from the commencement of service under it, but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

History: En. Sec. 2675, Civ. C. 1895; re-en. Sec. 5258, Rev. C. 1907; re-en. Sec. 7773, R.C.M. 1921; Cal. Civ. C. Sec. 1980; Field Civ. C. Sec. 1013; re-en. Sec. 7773, R.C.M. 1935; R.C.M. 1947, 41-206; amd. Sec. 20, Ch. 117, L. 1979.

Cross-References

Obligation of one who unilaterally decides to render service, 28-1-202.

Employment defined, 39-2-101.

Term of hiring, 39-2-602.

Part 8

Consideration

28-2-801. What constitutes good consideration. Any benefit conferred or agreed to be conferred upon the promisor by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor is a good consideration for a promise.

History: En. Sec. 2160, Civ. C. 1895; re-en. Sec. 5001, Rev. C. 1907; re-en. Sec. 7503, R.C.M. 1921; Cal. Civ. C. Sec. 1605; Field Civ. C. Sec. 780; re-en. Sec. 7503, R.C.M. 1935; R.C.M. 1947, 13-501.

Cross-References

Parties who cannot be compelled to perform, 27-1-415.

Essential elements of a contract, 28-2-102.

U.C.C. — sales, formation of contract in general, 30-2-204.

U.C.C. — sales, offer and acceptance in formation of contract, 30-2-206.

28-2-802. Extent to which existing legal or moral obligation is good consideration. An existing legal obligation resting upon the promisor, a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee is also a good consideration for a promise to an extent corresponding with the extent of the obligation, but no further or otherwise.

History: En. Sec. 2161, Civ. C. 1895; re-en. Sec. 5002, Rev. C. 1907; re-en. Sec. 7504, R.C.M. 1921; Cal. Civ. C. Sec. 1606; Field Civ. C. Sec. 781; re-en. Sec. 7504, R.C.M. 1935; R.C.M. 1947, 13-502.

Cross-References

How obligations arise, 28-1-102.

Liability for acts or debts of spouse, 40-2-106.

Minor cannot disaffirm contract for necessaries, 41-1-305.

28-2-803. Consideration to be lawful — effect of illegality. The consideration of a contract must be lawful within the meaning of 28-2-701. If any part of a single consideration for one or more objects or of several considerations for a single object is unlawful, the entire contract is void.

History: En. Secs. 2162, 2163, Civ. C. 1895; re-en. Secs. 5003, 5004, Rev. C. 1907; re-en. Secs. 7505, 7506, R.C.M. 1921; Cal. Civ. C. Secs. 1607, 1608; Field Civ. C. Secs. 782, 783; re-en. Sec. 7505, 7506, R.C.M. 1935; R.C.M. 1947, 13-503, 13-504.

Cross-References

What is unlawful, 28-2-701.

28-2-804. Written instrument presumptive evidence of consideration. A written instrument is presumptive evidence of a consideration.

History: En. Sec. 2169, Civ. C. 1895; re-en. Sec. 5010, Rev. C. 1907; re-en. Sec. 7512, R.C.M. 1921; Cal. Civ. C. Sec. 1614; re-en. Sec. 7512, R.C.M. 1935; R.C.M. 1947, 13-510.

Cross-References

Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

Formal requirements, Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-805. Burden of proof of want of consideration. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

History: En. Sec. 2170, Civ. C. 1895; re-en. Sec. 5011, Rev. C. 1907; re-en. Sec. 7513, R.C.M. 1921; Cal. Civ. C. Sec. 1615; re-en. Sec. 7513, R.C.M. 1935; R.C.M. 1947, 13-511.

Cross-References

Who has burden of persuasion, 26-1-402.

Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

28-2-806 through 28-2-810 reserved.

28-2-811. Applicability of rules concerning object to executory consideration. A consideration may be executed or executory, in whole or in part. Insofar as it is executory, it is subject to the provisions of part 6 of this chapter.

History: En. Sec. 2164, Civ. C. 1895; re-en. Sec. 5005, Rev. C. 1907; re-en. Sec. 7507, R.C.M. 1921; Cal. Civ. C. Sec. 1609; Field Civ. C. Sec. 784; re-en. Sec. 7507, R.C.M. 1935; R.C.M. 1947, 13-505.

Cross-References

Executed versus executory contracts, 28-2-104.

28-2-812. How amount of executory consideration may be determined. When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person or regulated by any specified standard.

History: En. Sec. 2165, Civ. C. 1895; re-en. Sec. 5006, Rev. C. 1907; re-en. Sec. 7508, R.C.M. 1921; Cal. Civ. C. Sec. 1610; Field Civ. C. Sec. 785; re-en. Sec. 7508, R.C.M. 1935; R.C.M. 1947, 13-506.

Cross-References

Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

28-2-813. Determination by interested party. When a contract does not determine the amount of the consideration or the method by which it is to be ascertained or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

History: En. Sec. 2166, Civ. C. 1895; re-en. Sec. 5007, Rev. C. 1907; re-en. Sec. 7509, R.C.M. 1921; Cal. Civ. C. Sec. 1611; Field Civ. C. Sec. 786; re-en. Sec. 7509, R.C.M. 1935; R.C.M. 1947, 13-507.

28-2-814. Effect of impossibility of designated exclusive method of determination. (1) Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

(2) Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face but in fact is or becomes impossible of execution, such provision only is void.

History: En. Secs. 2167, 2168, Civ. C. 1895; re-en. Secs. 5008, 5009, Rev. C. 1907; re-en. Secs. 7510, 7511, R.C.M. 1921; Cal. Civ. C. Secs. 1612, 1613; Field Civ. C. Secs. 787, 788; re-en. Secs. 7510, 7511, R.C.M. 1935; R.C.M. 1947, 13-508, 13-509.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Impossible conditions, 28-2-707.

Part 9

Written Contracts

Part Cross-References

Contents of writings, Art. X, M.R.Ev. (see Title 26, ch. 10).

Formal requirements — Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

Real property sales, 30-11-111.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Requirements of retail installment contracts, 31-1-231.

28-2-901. When contracts may be oral. All contracts may be oral except such as are specially required by statute to be in writing.

History: En. Sec. 2183, Civ. C. 1895; re-en. Sec. 5015, Rev. C. 1907; re-en. Sec. 7517, R.C.M. 1921; Cal. Civ. C. Sec. 1622; Field Civ. C. Sec. 792; re-en. Sec. 7517, R.C.M. 1935; R.C.M. 1947, 13-604.

Cross-References

When guaranty considered original obligation and need not be in writing, 28-11-105.

28-2-902. Enforcement of contract not in writing through fraud. Where a contract which is required by law to be in writing is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing and acts upon such belief to his prejudice may enforce it against the fraudulent party.

History: En. Sec. 2184, Civ. C. 1895; re-en. Sec. 5016, Rev. C. 1907; re-en. Sec. 7518, R.C.M. 1921; Cal. Civ. C. Sec. 1623; Field Civ. C. Sec. 793; re-en. Sec. 7518, R.C.M. 1935; R.C.M. 1947, 13-605.

Cross-References

Fraud, 28-2-404 through 28-2-406.

U.C.C. — sales — remedies for fraud, 30-2-721.

28-2-903. What contracts must be in writing. (1) The following agreements are invalid unless the same or some note or memorandum thereof is in writing and subscribed by the party to be charged or his agent:

(a) an agreement that by its terms is not to be performed within a year from the making thereof;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

(2) Evidence of an agreement described in (a) through (d) of subsection (1) is not admissible without the writing or secondary evidence of its contents.

(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memoran-

dum thereof is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code.

History: **(1)Subds. a to c; en. Secs. 12 to 14, p. 494, Bannack Stat.; re-en. Secs. 12 to 14, pp. 393, 394, Cod. Stat. 1871; re-en. Secs. 166 to 168, 5th Div. Rev. Stat. 1879; re-en. Secs. 223 to 225, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; Subd. d; en. Sec. 8., p. 493, Bannack Stat.; re-en. Sec. 8, p. 393, Cod. Stat. 1871; re-en. Sec. 162, 5th Div. Rev. Stat. 1879; re-en. Sec. 219, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; Subd. e; en. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; all subdivisions re-en. Sec. 7519, R.C.M. 1921; Cal. Civ. C. Sec. 1624; re-en. Sec. 7519, R.C.M. 1935; amd. Sec. 11-110, Ch. 264, L. 1963; Sec. 13-606, R.C.M. 1947; (2), (4)En. Sec. 3276, C. Civ. Proc. 1895; re-en. Sec. 7969, Rev. C. 1907; re-en. Sec. 10613, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1973; re-en. Sec. 10613, R.C.M. 1935; amd. Sec. 11-171, Ch. 264, L. 1963; Sec. 93-1401-7, R.C.M. 1947; (3)En. Sec. 3277, C. Civ. Proc. 1895; re-en. Sec. 7970, Rev. C. 1907; re-en. Sec. 10614, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1974; re-en. Sec. 10614, R.C.M. 1935; Sec. 93-1401-8, R.C.M. 1947; R.C.M. 1947, 13-606, 93-1401-7, 93-1401-8; amd. Sec. 21, Ch. 117, L. 1979.**

Cross-References

Agency — when written authorization necessary, 28-10-203.

Authority of agents to be in writing, 28-10-203.

Guaranty generally to be in writing — form, 28-11-104.

Promise to answer for debt of another, 28-11-105.

Statute of Frauds for kinds of personal property not otherwise covered, 30-1-206.

Formal requirements — Statute of Frauds, 30-2-201.

U.C.C. — letters of credit, Title 30, ch. 5.

Statute of Frauds — securities, 30-8-319.

Enforceability of security interest, 30-9-203.

Contract for sale of real property — covenants, 30-11-109, 30-11-111.

Auctioneer's memorandum — sufficiency, 30-11-504.

Variation from legal interest rate, 31-1-106.

Retail installment contracts, 31-1-231.

Assignment for the benefit of creditors, 31-2-210.

Insurance policy must contain entire contract, 33-15-302.

When contract in writing is binding on mining partnership, 35-13-201.

Marriage settlement contracts, 40-2-312.

Notice to purchaser of property under contract for deed, 70-20-115.

Lease of city lot for over 75 years void, 70-26-110.

Power of attorney to execute mortgage, 71-1-102.

Mortgage of real property, Title 71, ch. 1, part 2.

28-2-904. Effect of written contract on oral agreements. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

History: **En. Sec. 2186, Civ. C. 1895; re-en. Sec. 5018, Rev. C. 1907; re-en. Sec. 7520, R.C.M. 1921; Cal. Civ. C. Sec. 1625; Field Civ. C. Sec. 795; re-en. Sec. 7520, R.C.M. 1935; R.C.M. 1947, 13-607.**

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-905. When extrinsic evidence concerning a written agreement may be considered. (1) Whenever the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms. Therefore, there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) when a mistake or imperfection of the writing is put in issue by the pleadings;

(b) when the validity of the agreement is the fact in dispute.

(2) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as described in 1-4-102, or other evidence to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", for the purposes of this section, includes deeds and wills as well as contracts between parties.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13; amd. Sec. 22, Ch. 117, L. 1979.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Fraud, mistake, condition of the mind, Rule 9(b), M.R.Civ.P. (see Title 25, ch. 20).

Uncertainty to be resolved against party causing it, 28-3-206.

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

Reference to circumstances permissible, 28-3-402.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-906. When written contract takes effect. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his agent.

History: En. Sec. 2187, Civ. C. 1895; re-en. Sec. 5019, Rev. C. 1907; re-en. Sec. 7521, R.C.M. 1921; Cal. Civ. C. Sec. 1626; Field Civ. C. Sec. 796; re-en. Sec. 7521, R.C.M. 1935; R.C.M. 1947, 13-608.

Cross-References

Formation in general — U.C.C. — sales, 30-2-204.

Offer and acceptance in formation of contract, 30-2-206.

28-2-907. Applicability of rules concerning transfers in general. The provisions of Title 70, chapter 1, part 5, and 70-20-110 concerning the delivery of grants, absolute and conditional, apply to all written contracts.

History: En. Sec. 2188, Civ. C. 1895; re-en. Sec. 5020, Rev. C. 1907; re-en. Sec. 7522, R.C.M. 1921; Cal. Civ. C. Sec. 1627; Field Civ. C. Sec. 797; re-en. Sec. 7522, R.C.M. 1935; R.C.M. 1947, 13-609.

Cross-References

U.C.C. — sales — power to transfer, 30-2-403.

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

Parts 10 through 14 reserved

Part 15

Enforcement of Contracts

Part Cross-References

Postsecondary educational institutions — enforceability of notes and contracts, 20-30-402.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Specific and preventive relief, Title 27, ch. 1, part 4.

Effect of corporate merger on contract rights, 35-15-505.

28-2-1501. When successive actions on same contract permitted. Successive actions may be maintained upon the same contract or transaction whenever after the former action a new cause of action arises therefrom.

History: En. Sec. 426, p. 130, Bannack Stat.; re-en. Sec. 496, p. 232, L. 1867; re-en. Sec. 20, p. 30, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 1893, C. Civ. Proc. 1895; re-en. Sec. 7186, Rev. C. 1907; re-en. Sec. 9819, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1047; re-en. Sec. 9819, R.C.M. 1935; R.C.M. 1947, 93-8704.

Part 16

Modification of Contracts

Part Cross-References

Specific and preventive relief, Title 27, ch. 1, part 4.

When final injunction may be granted to prevent breach of obligation, 27-19-102.

Modification, rescission and waiver, U.C.C. — sales, 30-2-209.

Refinancing retail installment contract, 31-1-243.

28-2-1601. Alteration of oral contract by parties. A contract not in writing may be altered in any respect by consent of the parties in writing without a new consideration and is extinguished thereby to the extent of the new alteration.

History: En. Sec. 2280, Civ. C. 1895; re-en. Sec. 5066, Rev. C. 1907; re-en. Sec. 7568, R.C.M. 1921; Cal. Civ. C. Sec. 1697; Based on Field Civ. C. Sec. 842; re-en. Sec. 7568, R.C.M. 1935; R.C.M. 1947, 13-906.

Cross-References

When contracts may be oral, 28-2-901.

Course of dealing and usage of trade, 30-1-205.

Modification, rescission and waiver, 30-2-209.

28-2-1602. How written contract may be altered by parties. A contract in writing may be altered by a contract in writing or by an executed oral agreement, and not otherwise.

History: En. Sec. 2281, Civ. C. 1895; re-en. Sec. 5067, Rev. C. 1907; re-en. Sec. 7569, R.C.M. 1921; Cal. Civ. C. Sec. 1698; re-en. Sec. 7569, R.C.M. 1935; R.C.M. 1947, 13-907.

Cross-References

Extinction of written contract by destruction or cancellation, 28-2-1702.

Course of dealing and usage of trade, 30-1-205.

Additional terms in acceptance or confirmation, 30-2-207.

Course of performance or practical construction, 30-2-208.

Modification, rescission and waiver, 30-2-209.

28-2-1603 through 28-2-1610 reserved.

28-2-1611. When written contract may be revised by court. When, through fraud or a mutual mistake of the parties or a mistake of one party while the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons in good faith and for value.

History: En. Sec. 4430, Civ. C. 1895; re-en. Sec. 6108, Rev. C. 1907; re-en. Sec. 8726, R.C.M. 1921; Cal. Civ. C. Sec. 3399; Field Civ. C. Sec. 1899; re-en. Sec. 8726, R.C.M. 1935; R.C.M. 1947, 17-901.

Cross-References

Interpretation of instruments — role of judge, 1-4-101.

28-2-1612. Presumption that parties intended equitable agreement. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

History: En. Sec. 4431, Civ. C. 1895; re-en. Sec. 6109, Rev. C. 1907; re-en. Sec. 8727, R.C.M. 1921; Cal. Civ. C. Sec. 3400; Field Civ. C. Sec. 1900; re-en. Sec. 8727, R.C.M. 1935; R.C.M. 1947, 17-902.

Cross-References

Intention of the parties — particular and general provisions, 1-4-103.

Intention of the parties, Title 28, ch. 3, part 3.

28-2-1613. Scope of court's inquiry. In revising a written instrument, the court may inquire what the instrument was intended to mean and what were intended to be its legal consequences and is not confined to the inquiry what the language of the instrument was intended to be.

History: En. Sec. 4432, Civ. C. 1895; re-en. Sec. 6110, Rev. C. 1907; re-en. Sec. 8728, R.C.M. 1921; Cal. Civ. C. Sec. 3401; Field Civ. C. Sec. 1901; re-en. Sec. 8728, R.C.M. 1935; R.C.M. 1947, 17-903.

Cross-References

Interpretation of instruments — role of judge, 1-4-101.

28-2-1614. Specific enforcement of revised contract. A contract may be first revised and then specifically enforced.

History: En. Sec. 4433, Civ. C. 1895; re-en. Sec. 6111, Rev. C. 1907; re-en. Sec. 8729, R.C.M. 1921; Cal. Civ. C. Sec. 3402; Field Civ. C. Sec. 1902; re-en. Sec. 8729, R.C.M. 1935; R.C.M. 1947, 17-904.

Cross-References

Specific performance, Title 27, ch. 1, part 4.

Part 17

Extinction of Contracts — Rescission

Part Cross-References

Breach of agreement to convey real property, 27-1-314.

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Specific and preventive relief, Title 27, ch. 1, part 4.

When final injunction may be granted to prevent breach of obligation, 27-19-102.

Modification, rescission and waiver, 30-2-209.

U.C.C. — sales — breach, repudiation, and excuse, Title 30, ch. 2, part 6.

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

Termination, cancellation, nonrenewal, or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

Personal solicitation sales — cancellation by buyer, 30-14-504, 30-14-505.

Retail installment contracts — buyer's right of rescission, 31-1-232.

28-2-1701. How contract extinguished. (1) A contract may be extinguished in the same manner as any other obligation and also in the manner prescribed by part 16 and this part.

(2) A contract is extinguished by its rescission.

History: (1)En. Sec. 2260, Civ. C. 1895; re-en. Sec. 5061, Rev. C. 1907; re-en. Sec. 7563, R.C.M. 1921; Cal. Civ. C. Sec. 1682; re-en. Sec. 7563, R.C.M. 1935; Sec. 13-901, R.C.M. 1947; (2)En. Sec. 2270, Civ. C. 1895; re-en. Sec. 5062, Rev. C. 1907; re-en. Sec. 7564, R.C.M. 1921; Cal. Civ. C. Sec. 1688; Field Civ. C. Sec. 838; re-en. Sec. 7564, R.C.M. 1935; Sec. 13-902, R.C.M. 1947; R.C.M. 1947, 13-901, 13-902; amd. Sec. 23, Ch. 117, L. 1979.

Cross-References

Damages for breach of contract, 27-1-311.

Extinction of obligation by performance, Title 28, ch. 1, part 11.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Accord and satisfaction, Title 28, ch. 1, part 14.

Kinds of novation, 28-1-1502.

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Extinction of obligation by a release, 28-1-1601.

Revision, Title 28, ch. 2, part 16.

U.C.C. — sales, performance, Title 30, ch. 2, part 5.

U.C.C. — sales, breach, repudiation, and excuse, Title 30, ch. 2, part 6.

28-2-1702. Extinction of written contract by destruction or cancellation. The destruction or cancellation of a written contract or of the signature of the parties liable thereon with intent to extinguish the obligation thereof extinguishes it as to all the parties consenting to the act.

History: En. Sec. 2282, Civ. C. 1895; re-en. Sec. 5068, Rev. C. 1907; re-en. Sec. 7570, R.C.M. 1921; Cal. Civ. C. Sec. 1699; re-en. Sec. 7570, R.C.M. 1935; R.C.M. 1947, 13-908.

28-2-1703. Extinction of executory obligations of contract by destruction, cancellation, or alteration. (1) The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under it or with his consent extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act.

(2) Where a contract is executed in duplicate, an alteration or destruction of one copy while the other exists is not within the provisions of subsection (1).

History: En. Secs. 2283, 2284, Civ. C. 1895; re-en. Secs. 5069, 5070, Rev. C. 1907; re-en. Secs. 7571, 7572, R.C.M. 1921; Cal. Civ. C. Secs. 1700, 1701; Field Civ. C. Secs. 845, 846; re-en. Secs. 7571, 7572, R.C.M. 1935; R.C.M. 1947, 13-909, 13-910.

Cross-References

Executed versus executory contracts, 28-2-104.

28-2-1704 through 28-2-1710 reserved.

28-2-1711. When party may rescind. A party to a contract may rescind the same in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with him was given by mistake or obtained through duress, menace, fraud, or undue influence exercised by or with the connivance of the party as to whom he rescinds or of any other party to the contract jointly interested with such party;

(2) if, through the fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part;

(3) if such consideration becomes entirely void from any cause;

(4) if such consideration, before it is rendered to him, fails in a material respect from any cause; or

(5) if all the other parties consent.

History: En. Sec. 2271, Civ. C. 1895; re-en. Sec. 5063, Rev. C. 1907; re-en. Sec. 7565, R.C.M. 1921; Cal. Civ. C. Sec. 1689; Field Civ. C. Sec. 839; re-en. Sec. 7565, R.C.M. 1935; R.C.M. 1947, 13-903; amd. Sec. 24, Ch. 117, L. 1979.

Cross-References

Insane persons — disaffirmance, 28-2-202 through 28-2-204.

Effect of consent which is not free, 28-2-302.

Modification, rescission and waiver, 30-2-209.

Minors — disaffirmance, Title 41, ch. 1, part 3.

28-2-1712. When stipulation against rescission ineffective. A stipulation that errors of description shall not avoid a contract or shall be the subject of compensation, or both, does not take away the right of rescission for fraud or for mistake where such mistake is in a matter essential to the inducement of the contract and is not capable of exact and entire compensation.

History: En. Sec. 2272, Civ. C. 1895; re-en. Sec. 5064, Rev. C. 1907; re-en. Sec. 7566, R.C.M. 1921; Cal. Civ. C. Sec. 1690; Field Civ. C. Sec. 840; re-en. Sec. 7566, R.C.M. 1935; R.C.M. 1947, 13-904.

Cross-References

Fraud, 28-2-404 through 28-2-406.

Mistake, 28-2-408 through 28-2-411.

U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.

28-2-1713. How rescission accomplished. Rescission, when not effected by consent, can be accomplished only by the use on the part of the party rescinding of reasonable diligence to comply with the following rules:

(1) He must rescind promptly upon discovering the facts which entitle him to rescind if he is free from duress, menace, undue influence, or disability and is aware of his right to rescind.

(2) He must restore to the other party everything of value which he has received from him under the contract or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

History: **En. Sec. 2273, Civ. C. 1895; re-en. Sec. 5065, Rev. C. 1907; re-en. Sec. 7567, R.C.M. 1921; Cal. Civ. C. Sec. 1691; Field Civ. C. Sec. 841; re-en. Sec. 7567, R.C.M. 1935; R.C.M. 1947, 13-905.**

Cross-References

U.C.C. — sales, modification, rescission and waiver, 30-2-209.

U.C.C. — sales, seller's remedies, 30-2-702, 30-2-703.

U.C.C. — sales, buyer's remedies, 30-2-711.

28-2-1714. When rescission may be adjudged. The rescission of a written contract may be adjudged on the application of a party aggrieved:

(1) in any of the cases mentioned in 28-2-1711;

(2) where the contract is unlawful for causes not apparent upon its face and the parties were not equally in fault; or

(3) when the public interest will be prejudiced by permitting it to stand.

History: **En. Sec. 4440, Civ. C. 1895; re-en. Sec. 6112, Rev. C. 1907; re-en. Sec. 8730, R.C.M. 1921; Cal. Civ. C. Sec. 3406; Field Civ. C. Sec. 1903; re-en. Sec. 8730, R.C.M. 1935; R.C.M. 1947, 17-905.**

Cross-References

What is unlawful, 28-2-701.

Modification, rescission and waiver, 30-2-209.

28-2-1715. When rescission may be adjudged for mistake. Rescission cannot be adjudged for mere mistake unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

History: **En. Sec. 4441, Civ. C. 1895; re-en. Sec. 6113, Rev. C. 1907; re-en. Sec. 8731, R.C.M. 1921; Cal. Civ. C. Sec. 3407; Field Civ. C. Sec. 1904; re-en. Sec. 8731, R.C.M. 1935; R.C.M. 1947, 17-906.**

Cross-References

Mistake, 28-2-408 through 28-2-411.

Modification, rescission and waiver, 30-2-209.

28-2-1716. Power of court to require party rescinding to do equity. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation or restoration to the other which justice may require.

History: **En. Sec. 4442, Civ. C. 1895; re-en. Sec. 6114, Rev. C. 1907; re-en. Sec. 8732, R.C.M. 1921; Cal. Civ. C. Sec. 3408; Field Civ. C. Sec. 1905; re-en. Sec. 8732, R.C.M. 1935; R.C.M. 1947, 17-907.**

Cross-References

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CHAPTER 3

INTERPRETATION OF CONTRACTS

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Construction of contracts — weights, measures, standards, and labeling, 30-12-106.

Construction of insurance policies, 33-15-316.

Part 1

General Provisions

28-3-101. Rules of interpretation to be uniform. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

History: En. Sec. 2200, Civ. C. 1895; re-en. Sec. 5024, Rev. C. 1907; re-en. Sec. 7526, R.C.M. 1921; Cal. Civ. C. Sec. 1635; Field Civ. C. Sec. 800; re-en. Sec. 7526, R.C.M. 1935; R.C.M. 1947, 13-701.

Cross-References

Interpretation of instruments, Title 1, ch. 4.

Public obligations registration — construction, 17-5-1104.

Montana Procurement Act — supplementary general principles of law applicable, 18-4-131.

What rules govern interpretation of contracts and other obligations, 28-1-103.

28-3-102. What law and usage to govern interpretation. A contract is to be interpreted according to the law and usage of the place where it is to be performed or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

History: En. Sec. 2211, Civ. C. 1895; re-en. Sec. 5035, Rev. C. 1907; re-en. Sec. 7537, R.C.M. 1921; Cal. Civ. C. Sec. 1646; Field Civ. C. Sec. 811; re-en. Sec. 7537, R.C.M. 1935; R.C.M. 1947, 13-712.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Liability under guaranty of incomplete contract, 28-11-202.

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Part 2

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Part Cross-References

Interpretation of instruments, Title 1, ch. 4.

What rules govern interpretation of contracts and other obligations, 28-1-103.

General obligation and construction of contract, Title 30, ch. 2, part 3.

28-3-201. Interpretation giving effect to contract favored. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect if it can be done without violating the intention of the parties.

History: En. Sec. 2208, Civ. C. 1895; re-en. Sec. 5032, Rev. C. 1907; re-en. Sec. 7534, R.C.M. 1921; Cal. Civ. C. Sec. 1643; Field Civ. C. Sec. 808; re-en. Sec. 7534, R.C.M. 1935; R.C.M. 1947, 13-709.

Cross-References

What ought to have been done, 1-3-220.

Certainty, 1-3-229.

Avoiding voidness, 1-3-232.

Formation in general, 30-2-204.

28-3-202. Effect to be given to every part of contract. The whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other.

History: En. Sec. 2206, Civ. C. 1895; re-en. Sec. 5030, Rev. C. 1907; re-en. Sec. 7532, R.C.M. 1921; Cal. Civ. C. Sec. 1641; Field Civ. C. Sec. 806; re-en. Sec. 7532, R.C.M. 1935; R.C.M. 1947, 13-707.

28-3-203. When several contracts taken together. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction are to be taken together.

History: En. Sec. 2207, Civ. C. 1895; re-en. Sec. 5031, Rev. C. 1907; re-en. Sec. 7533, R.C.M. 1921; Cal. Civ. C. Sec. 1642; Field Civ. C. Sec. 807; re-en. Sec. 7533, R.C.M. 1935; R.C.M. 1947, 13-708.

Cross-References

Final written expression — parol or extrinsic evidence, 30-2-202.

Additional terms in acceptance or confirmation, 30-2-207.

U.C.C. — sales — remedies for breach of collateral contracts not impaired, 30-2-701.

28-3-204. How repugnancies reconciled. Repugnancies in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

History: En. Sec. 2217, Civ. C. 1895; re-en. Sec. 5041, Rev. C. 1907; re-en. Sec. 7543, R.C.M. 1921; Cal. Civ. C. Sec. 1652; Field Civ. C. Sec. 817; re-en. Sec. 7543, R.C.M. 1935; R.C.M. 1947, 13-718.

Cross-References

Intention of the parties — particular and general provisions, 1-4-103.

Construction of terms, 1-4-107.

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

Particular clauses subordinate to general intent, 28-3-307.

Additional terms in acceptance or confirmation, 30-2-207.

Options and cooperation respecting performance, 30-2-311.

28-3-205. Written or original terms to control printed terms. Where a contract is partly written and partly printed or where part of it is written or printed under the special directions of the parties and with a special view to their intention and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts and the parts which are purely original control those which are copied from a form and, if the two are absolutely repugnant, the latter must be so far disregarded.

History: En. Sec. 2216, Civ. C. 1895; re-en. Sec. 5040, Rev. C. 1907; re-en. Sec. 7542, R.C.M. 1921; Cal. Civ. C. Sec. 1651; Field Civ. C. Sec. 816; re-en. Sec. 7542, R.C.M. 1935; R.C.M. 1947, 13-717.

Cross-References

Written words versus words in printed form, 1-4-105.

28-3-206. Uncertainty to be resolved against party causing it. In cases of uncertainty not removed by parts 1 through 5 of this chapter, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, except that in the case of a contract between a public officer or body, as such, and a private party, it is presumed that all uncertainty was caused by the private party.

History: En. Sec. 2219, Civ. C. 1895; re-en. Sec. 5043, Rev. C. 1907; re-en. Sec. 7545, R.C.M. 1921; Cal. Civ. C. Sec. 1654; Field Civ. C. Sec. 819; re-en. Sec. 7545, R.C.M. 1935; R.C.M. 1947, 13-720; amd. Sec. 25, Ch. 117, L. 1979.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Public contracts — contract actions against the state, Title 18, ch. 1, part 4.

Express versus implied contracts, 28-2-103.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Interpretation of terms that are ambiguous or were intended in a different sense by different parties, 28-3-306.

Additional terms in acceptance or confirmation, 30-2-207.

Part 3

Intention of the Parties

Part Cross-References

Intention of the parties — particular and general provisions, 1-4-103.

When contract considered a pledge to transfer property, 71-2-102.

Lien or contract for lien transfers no title, 71-3-108.

28-3-301. Interpretation to give effect to mutual intention. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

History: En. Sec. 2201, Civ. C. 1895; re-en. Sec. 5025, Rev. C. 1907; re-en. Sec. 7527, R.C.M. 1921; Cal. Civ. C. Sec. 1636; Field Civ. C. Sec. 801; re-en. Sec. 7527, R.C.M. 1935; R.C.M. 1947, 13-702.

Cross-References

Essential characteristics of consent, 28-2-301.

When consent is mutual, 28-2-303.

What is unlawful, 28-2-701.

28-3-302. How intention ascertained. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

History: En. Sec. 2202, Civ. C. 1895; re-en. Sec. 5026, Rev. C. 1907; re-en. Sec. 7528, R.C.M. 1921; Cal. Civ. C. Sec. 1637; Field Civ. C. Sec. 802; re-en. Sec. 7528, R.C.M. 1935; R.C.M. 1947, 13-703.

28-3-303. Writing generally to determine intention. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this chapter.

History: En. Sec. 2204, Civ. C. 1895; re-en. Sec. 5028, Rev. C. 1907; re-en. Sec. 7530, R.C.M. 1921; Cal. Civ. C. Sec. 1639; Field Civ. C. Sec. 804; re-en. Sec. 7530, R.C.M. 1935; R.C.M. 1947, 13-705.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Construction of terms, 1-4-107.

Formal requirements — Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-3-304. When writing disregarded. When through fraud, mistake, or accident a written contract fails to express the real intention of the parties, such intention is to be regarded and the erroneous parts of the writing disregarded.

History: En. Sec. 2205, Civ. C. 1895; re-en. Sec. 5029, Rev. C. 1907; re-en. Sec. 7531, R.C.M. 1921; Cal. Civ. C. Sec. 1640; Field Civ. C. Sec. 805; re-en. Sec. 7531, R.C.M. 1935; R.C.M. 1947, 13-706.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Liability for damages for deceit, 27-1-712.

Duty to restore thing wrongfully acquired or retained, 27-1-713.

Actions for relief on ground of fraud or mistake, 27-2-203.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-3-305. Contract restricted to its apparent objects. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

History: En. Sec. 2213, Civ. C. 1895; re-en. Sec. 5037, Rev. C. 1907; re-en. Sec. 7539, R.C.M. 1921; Cal. Civ. C. Sec. 1648; Field Civ. C. Sec. 813; re-en. Sec. 7539, R.C.M. 1935; R.C.M. 1947, 13-714.

Cross-References

Object of contract defined, 28-2-601.

Formation in general, 30-2-204.

Offer and acceptance in formation of contract, 30-2-206.

Additional terms in acceptance and confirmation, 30-2-207.

28-3-306. Interpretation of terms that are ambiguous or were intended in a different sense by different parties. (1) If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

(2) When the terms of an agreement have been intended in a different sense by different parties to it, that sense is to prevail against either party in which he supposed the other understood it; and when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made.

History: (1)En. Sec. 2214, Civ. C. 1895; re-en. Sec. 5038, Rev. C. 1907; re-en. Sec. 7540, R.C.M. 1921; Cal. Civ. C. Sec. 1649; Field Civ. C. Sec. 814; re-en. Sec. 7540, R.C.M. 1935; Sec. 13-715, R.C.M. 1947; (2)En. Sec. 618, p. 200, L. 1877; re-en. Sec. 618, 1st Div. Rev. Stat. 1879; re-en. Sec. 636, 1st Div. Comp. Stat. 1887; re-en. Sec. 3140, C. Civ. Proc. 1895; re-en. Sec. 7881, Rev. C. 1907; re-en. Sec. 10525, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1864; re-en. Sec. 10525, R.C.M. 1935; Sec. 93-401-21, R.C.M. 1947; R.C.M. 1947, 13-715, 93-401-21.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Construction of terms, 1-4-107.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Uncertainty to be resolved against party causing it, 28-3-206.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-3-307. Particular clauses subordinate to general intent. Particular clauses of a contract are subordinate to its general intent.

History: En. Sec. 2215, Civ. C. 1895; re-en. Sec. 5039, Rev. C. 1907; re-en. Sec. 7541, R.C.M. 1921; Cal. Civ. C. Sec. 1650; Field Civ. C. Sec. 815; re-en. Sec. 7541, R.C.M. 1935; R.C.M. 1947, 13-716.

Cross-References

Particular versus general, 1-3-225.

Intention of the parties — particular and general provisions, 1-4-103.

How repugnancies reconciled, 28-3-204.

General obligation and construction of contract — U.C.C. sales, Title 30, ch. 2, part 3.

Part 4

Factors Considered in Determining Intention

Part Cross-References

General obligations of parties, 30-2-301.

Allocation or division of risks, 30-2-303.

28-3-401. Extent to which language governs interpretation. The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity.

History: En. Sec. 2203, Civ. C. 1895; re-en. Sec. 5027, Rev. C. 1907; re-en. Sec. 7529, R.C.M. 1921; Cal. Civ. C. Sec. 1638; Field Civ. C. Sec. 803; re-en. Sec. 7529, R.C.M. 1935; R.C.M. 1947, 13-704.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Formal requirements — Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-3-402. Reference to circumstances permissible. A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

History: En. Sec. 2212, Civ. C. 1895; re-en. Sec. 5036, Rev. C. 1907; re-en. Sec. 7538, R.C.M. 1921; Cal. Civ. C. Sec. 1647; Field Civ. C. Sec. 812; re-en. Sec. 7538, R.C.M. 1935; R.C.M. 1947, 13-713.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

28-3-403. Superseded. Sup. Ct. Ord. No. 12729, July 10, 1979. (See compiler's comments in annotations under Title 26, ch. 10, Mont. Rules of Evidence.)

History: **En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part); amd. Sec. 26, Ch. 117, L. 1979.**

Part 5

Interpretation of Words

Part Cross-References

Construction of words and phrases, 1-2-106.

Interpretation of language according to usage in place of execution, 1-4-106.

Life and Disability Insurance Policy Language Simplification Act, 33-15-321 through 33-15-329.

28-3-501. Words generally understood in their ordinary sense. The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning unless used by the parties in a technical sense or unless a special meaning is given to them by usage, in which case the latter must be followed.

History: **En. Sec. 2209, Civ. C. 1895; re-en. Sec. 5033, Rev. C. 1907; re-en. Sec. 7535, R.C.M. 1921; Cal. Civ. C. Sec. 1644; Field Civ. C. Sec. 809; re-en. Sec. 7535, R.C.M. 1935; R.C.M. 1947, 13-710.**

Cross-References

Construction of terms, 1-4-107.

28-3-502. Interpretation of technical words. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate unless clearly used in a different sense.

History: **En. Sec. 2210, Civ. C. 1895; re-en. Sec. 5034, Rev. C. 1907; re-en. Sec. 7536, R.C.M. 1921; Cal. Civ. C. Sec. 1645; Field Civ. C. Sec. 810; re-en. Sec. 7536, R.C.M. 1935; R.C.M. 1947, 13-711.**

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

Construction of terms, 1-4-107.

28-3-503. Inconsistent words to be rejected. Words in a contract which are wholly inconsistent with its nature or with the main intention of the parties are to be rejected.

History: **En. Sec. 2218, Civ. C. 1895; re-en. Sec. 5042, Rev. C. 1907; re-en. Sec. 7544, R.C.M. 1921; Cal. Civ. C. Sec. 1653; Field Civ. C. Sec. 818; re-en. Sec. 7544, R.C.M. 1935; R.C.M. 1947, 13-719.**

Cross-References

Intention of the parties — particular and general provisions, 1-4-103.

Construction of terms, 1-4-107.

Course of performance or practical construction, 30-2-208.

Part 6

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Rules concerning time, Title 1, ch. 1, part 3.

Time — reasonable time — "seasonably", 30-1-204.

Time for payment for ores, 82-2-421.

28-3-601. Time of performance when not specified. If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly (for example, if it consists in the payment of money only), it must be performed immediately upon the thing to be done being exactly ascertained.

History: En. Sec. 2222, Civ. C. 1895; re-en. Sec. 5046, Rev. C. 1907; re-en. Sec. 7548, R.C.M. 1921; Cal. Civ. C. Sec. 1657; Field Civ. C. Sec. 822; re-en. Sec. 7548, R.C.M. 1935; R.C.M. 1947, 13-723.

Cross-References

Absence of specific time provisions — notice of termination, 30-2-309.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Delivery to be within reasonable hours, 30-11-208.

28-3-602. When time considered of the essence. Time is never considered as of the essence of a contract unless by its terms expressly so provided.

History: En. Sec. 2223, Civ. C. 1895; re-en. Sec. 5047, Rev. C. 1907; re-en. Sec. 7549, R.C.M. 1921; Cal. Civ. C. Sec. 1658; Field Civ. C. Sec. 823; re-en. Sec. 7549, R.C.M. 1935; R.C.M. 1947, 13-724.

Cross-References

Absence of specific time provisions — notice of termination, 30-2-309.

28-3-603. Postponement of performance date which falls on holiday. Whenever any act of a secular nature other than a work of necessity or mercy is appointed by contract to be performed upon a particular day which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

History: En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R.C.M. 1921; Cal. Pol. C. Sec. 13; re-en. Sec. 12, R.C.M. 1935; R.C.M. 1947, 19-109.

Cross-References

Legal holidays and business days, 1-1-216.

Banks, transaction on holidays, 32-1-482.

Saturday treated as banking holiday, 32-1-483.

Part 7

Provisions Implied by Law

Part Cross-References

General obligations of parties, 30-2-301.

28-3-701. Stipulations necessary for reasonableness or conformity to usage. Stipulations which are necessary to make a contract reasonable or conformable to usage are implied in respect to matters concerning which the contract manifests no contrary intention.

History: En. Sec. 2220, Civ. C. 1895; re-en. Sec. 5044, Rev. C. 1907; re-en. Sec. 7546, R.C.M. 1921; Cal. Civ. C. Sec. 1655; Field Civ. C. Sec. 820; re-en. Sec. 7546, R.C.M. 1935; R.C.M. 1947, 13-721.

Cross-References

Reasonableness, 1-3-233.

Interpretation of language according to usage in place of execution, 1-4-106.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

28-3-702. Necessary and incidental terms. All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom unless some of them are expressly mentioned therein, in which case all other things of the same class are considered to be excluded.

History: En. Sec. 2221, Civ. C. 1895; re-en. Sec. 5045, Rev. C. 1907; re-en. Sec. 7547, R.C.M. 1921; Cal. Civ. C. Sec. 1656; Field Civ. C. Sec. 821; re-en. Sec. 7547, R.C.M. 1935; R.C.M. 1947, 13-722; amd. Sec. 27, Ch. 117, L. 1979.

Cross-References

Grant includes essentials, 1-3-213.

Final written expression — parol or extrinsic evidence, 30-2-202.

Additional terms in acceptance or confirmation, 30-2-207.

28-3-703. When promise presumed to be joint and several. (1) Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

(2) A promise made in the singular number but executed by several persons is presumed to be joint and several.

History: En. Secs. 2224, 2225, Civ. C. 1895; re-en. Secs. 5048, 5049, Rev. C. 1907; re-en. Secs. 7550, 7551, R.C.M. 1921; Cal. Civ. C. Secs. 1659, 1660; Field Civ. C. Secs. 824, 825; re-en. Secs. 7550, 7551, R.C.M. 1935; R.C.M. 1947, 13-725, 13-726.

Cross-References

Joint obligations, Title 28, ch. 1, part 3.

28-3-704. Contractual right to attorney fees treated as reciprocal. Whenever, by virtue of the provisions of any contract or obligation in the nature of a contract made and entered into at any time after July 1, 1971, one party to such contract or obligation has an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right shall bring an action upon the contract or obligation, then in any action on such contract or obligation all parties to the contract or obligation shall be deemed to have the same right to recover attorney fees and the prevailing party in any such action, whether by virtue of the express contractual right or by virtue of this section, shall be entitled to recover his reasonable attorney fees from the losing party or parties.

History: En. Sec. 1, Ch. 259, L. 1971; R.C.M. 1947, 93-8601.1.

Cross-References

Exclusion of attorney's fees in contract dispute with state, 18-1-404.

Attorney's fees, Title 25, ch. 10, part 3.

U.C.C. — commercial paper — tender of payment excludes, 30-3-604.

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RESERVED

CHAPTER 10

AGENCY

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Principal-agent relationship grounds for disqualification — condemnation commissioners, 70-30-207.

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Part 1

General Provisions

28-10-101. Definitions of agent and agency. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

History: **En. Sec. 3070, Civ. C. 1895; re-en. Sec. 5413, Rev. C. 1907; re-en. Sec. 7928, R.C.M. 1921; Cal. Civ. C. Sec. 2295; Field Civ. C. Sec. 1216; re-en. Sec. 7928, R.C.M. 1935; R.C.M. 1947, 2-101.**

Cross-References

Postsecondary institution agent, 20-30-101.

Factor defined, 30-11-601.

Criminal investigation agent, 44-2-111.

Liability for acts committed by or for another, Title 45, ch. 2, part 3.

Agent acting for corporation when law not complied with — misdemeanor, 45-2-311.

28-10-102. General versus special agents. An agent for a particular act or transaction is called a special agent. All others are general agents.

History: En. Sec. 3072, Civ. C. 1895; re-en. Sec. 5415, Rev. C. 1907; re-en. Sec. 7930, R.C.M. 1921; Cal. Civ. C. Sec. 2297; Field Civ. C. Sec. 1218; re-en. Sec. 7930, R.C.M. 1935; R.C.M. 1947, 2-103.

28-10-103. Actual versus ostensible agency. An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be his agent who is not really employed by him.

History: En. Secs. 3073, 3074, 3075, Civ. C. 1895; re-en. Secs. 5416, 5417, 5418, Rev. C. 1907; re-en. Secs. 7931, 7932, 7933, R.C.M. 1921; Cal. Civ. C. Secs. 2298, 2299, 2300; Field Civ. C. Secs. 1219, 1220, 1221; re-en. Secs. 7931, 7932, 7933, R.C.M. 1935; R.C.M. 1947, 2-104, 2-105, 2-106.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

Authority of factor, 30-11-606.

Ostensible authority, 30-11-607.

28-10-104. Who may appoint an agent, who may be an agent. Any person having capacity to contract, except a minor, may appoint an agent, and any person may be an agent.

History: En. Secs. 16, 3071, Civ. C. 1895; re-en. Secs. 3590, 5414, Rev. C. 1907; re-en. Secs. 5678, 7929, R.C.M. 1921; Cal. Civ. C. Secs. 33, 2296; Field Civ. C. Secs. 15, 1217; re-en. Secs. 5678, 7929, R.C.M. 1935; R.C.M. 1947, 2-102, 64-105; amd. Sec. 28, Ch. 117, L. 1979.

Cross-References

University agency fund — state agency fund, 17-2-102.

Artist-art dealer — agency relationship, 22-2-503.

Who may contract, 28-2-201.

Applicability of laws relating to capacity to contract, 28-10-704.

Agency status of collecting banks, 30-4-201.

Cooperative agricultural marketing — who may be members, 35-17-301.

Delegation of power by minors forbidden, 41-1-301.

28-10-105. What acts agent may perform. (1) An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

(2) Every act which, according to this code, may be done by or to any person may be done by or to the agent of such person for that purpose unless a contrary intention clearly appears.

History: En. Secs. 3080, 3081, Civ. C. 1895; re-en. Secs. 5419, 5420, Rev. C. 1907; re-en. Secs. 7934, 7935, R.C.M. 1921; Cal. Civ. C. Secs. 2304, 2305; Field Civ. C. Secs. 1222, 1223; re-en. Secs. 7934, 7935, R.C.M. 1935; R.C.M. 1947, 2-107, 2-108.

Cross-References

Who must make offer of performance, 28-1-1204.

To whom offer must be made, 28-1-1205.

Agent not to exceed actual authority, 28-10-301.

What authority agent has, 28-10-401.

Implied powers of agent, 28-10-405.

Accrual of rights and liabilities to principal, 28-10-601.

Obedience required from factor, 30-11-602.

Authority of factor, 30-11-606.

Powers of associations, 35-17-106.

Inspection or transfer of criminal history records, 44-5-214.

Board of Housing as agent, 90-6-104.

Part 2

Creation of Agency

Part Cross-References

Master and servant — term of hiring, 39-2-602.

28-10-201. How agency may be created. An agency may be created and an authority may be conferred by a precedent authorization or a subsequent ratification.

History: En. Sec. 3083, Civ. C. 1895; re-en. Sec. 5422, Rev. C. 1907; re-en. Sec. 7937, R.C.M. 1921; Cal. Civ. C. Sec. 2307; Field Civ. C. Sec. 1225; re-en. Sec. 7937, R.C.M. 1935; R.C.M. 1947, 2-114.

Cross-References

Presumption and duration of agency status of collecting bank, 30-4-201.

28-10-202. Consideration unnecessary. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

History: En. Sec. 3084, Civ. C. 1895; re-en. Sec. 5423, Rev. C. 1907; re-en. Sec. 7938, R.C.M. 1921; Cal. Civ. C. Sec. 2308; Field Civ. C. Sec. 1226; re-en. Sec. 7938, R.C.M. 1935; R.C.M. 1947, 2-115.

Cross-References

Consideration, Title 28, ch. 2, part 8.

28-10-203. When written authorization necessary. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

History: En. Sec. 3085, Civ. C. 1895; re-en. Sec. 5424, Rev. C. 1907; re-en. Sec. 7939, R.C.M. 1921; Cal. Civ. C. Sec. 2309; Based on Field Civ. C. Sec. 1227; re-en. Sec. 7939, R.C.M. 1935; R.C.M. 1947, 2-116.

Cross-References

Artist-art dealer relationship — writing required, 22-2-503.

What contracts must be in writing, 28-2-903.

When agent responsible to third persons as a principal, 28-10-702.

Statute of Frauds for kinds of personal property not otherwise covered, 30-1-206.

Formal requirements — Statute of Frauds, 30-2-201.

Contract for sale of real property, 30-11-111.

28-10-204 through 28-10-210 reserved.

28-10-211. How agent's act ratified. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified or, whenever an oral authorization would suffice, by knowingly accepting or retaining the benefit of the act.

History: En. Sec. 3086, Civ. C. 1895; re-en. Sec. 5425, Rev. C. 1907; re-en. Sec. 7940, R.C.M. 1921; Cal. Civ. C. Sec. 2310; Field Civ. C. Sec. 1228; re-en. Sec. 7940, R.C.M. 1935; R.C.M. 1947, 2-117; amd. Sec. 29, Ch. 117, L. 1979.

Cross-References

Principal's consent needed to relieve factor from liability, 30-11-605.

28-10-212. Ratification of part of indivisible transaction. Ratification of part of an indivisible transaction is a ratification of the whole.

History: En. Sec. 3087, Civ. C. 1895; re-en. Sec. 5426, Rev. C. 1907; re-en. Sec. 7941, R.C.M. 1921; Cal. Civ. C. Sec. 2311; Field Civ. C. Sec. 1229; re-en. Sec. 7941, R.C.M. 1935; R.C.M. 1947, 2-118.

28-10-213. Ratification not to prejudice third persons. No unauthorized act can be made valid retroactively to the prejudice of third persons without their consent.

History: En. Sec. 3089, Civ. C. 1895; re-en. Sec. 5428, Rev. C. 1907; re-en. Sec. 7943, R.C.M. 1921; Cal. Civ. C. Sec. 2313; Field Civ. C. Sec. 1231; re-en. Sec. 7943, R.C.M. 1935; R.C.M. 1947, 2-120.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

28-10-214. When ratification void. A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

History: En. Sec. 3088, Civ. C. 1895; re-en. Sec. 5427, Rev. C. 1907; re-en. Sec. 7942, R.C.M. 1921; Cal. Civ. C. Sec. 2312; Field Civ. C. Sec. 1230; re-en. Sec. 7942, R.C.M. 1935; R.C.M. 1947, 2-119.

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

28-10-215. When ratification may be rescinded. A ratification may be rescinded when made without such consent as is required in a contract or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

History: En. Sec. 3090, Civ. C. 1895; re-en. Sec. 5429, Rev. C. 1907; re-en. Sec. 7944, R.C.M. 1921; Cal. Civ. C. Sec. 2314; Field Civ. C. Sec. 1232; re-en. Sec. 7944, R.C.M. 1935; R.C.M. 1947, 2-121.

Cross-References

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

Modification, rescission and waiver, 30-2-209.

Part 3

Duties of Agent

Part Cross-References

Rules determining rights and duties of partners, 35-10-401.

28-10-301. Agent not to exceed actual authority. An agent must not exceed the limits of his actual authority as defined by this chapter and parts 5 and 6 of chapter 11 of Title 30.

History: En. Sec. 2740, Civ. C. 1895; re-en. Sec. 5286, Rev. C. 1907; re-en. Sec. 7801, R.C.M. 1921; Cal. Civ. C. Sec. 2019; Field Civ. C. Sec. 1041; re-en. Sec. 7801, R.C.M. 1935; R.C.M. 1947, 2-109; amd. Sec. 30, Ch. 117, L. 1979.

Cross-References

Obedience required from factor, 30-11-602.

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

28-10-302. Duty to keep principal informed. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

History: En. Sec. 2741, Civ. C. 1895; re-en. Sec. 5287, Rev. C. 1907; re-en. Sec. 7802, R.C.M. 1921; Cal. Civ. C. Sec. 2020; Field Civ. C. Sec. 1042; re-en. Sec. 7802, R.C.M. 1935; R.C.M. 1947, 2-110.

Cross-References

Partnership charged with knowledge of or notice to partner, 35-10-304.

28-10-303. Duty of agent employed to collect negotiable instrument. An agent employed to collect a negotiable instrument must collect it promptly and take all measures necessary to charge the parties thereto in case of its dishonor and, if it is a bill of exchange, present it for acceptance with reasonable diligence.

History: En. Sec. 2742, Civ. C. 1895; re-en. Sec. 5288, Rev. C. 1907; re-en. Sec. 7803, R.C.M. 1921; Cal. Civ. C. Sec. 2021; Field Civ. C. Sec. 1043; re-en. Sec. 7803, R.C.M. 1935; R.C.M. 1947, 2-111.

Cross-References

Powers and duties of notary public, 1-5-416.

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Servant to pay over without demand, 39-2-605.

Part 4

Authority of Agent

Part Cross-References

Breach of warranty of agent's authority, 27-1-313.

Warranty of authority, 28-10-701.

Obedience required from factor, 30-11-602.

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

Members of grazing district as agents, 76-16-302.

28-10-401. What authority agent has. An agent has such authority as the principal actually or ostensibly confers upon him.

History: En. Sec. 3091, Civ. C. 1895; re-en. Sec. 5430, Rev. C. 1907; re-en. Sec. 7945, R.C.M. 1921; Cal. Civ. C. Sec. 2315; Field Civ. C. Sec. 1233; re-en. Sec. 7945, R.C.M. 1935; R.C.M. 1947, 2-122.

Cross-References

Actual versus ostensible agency, 28-10-103.

What acts agent may perform, 28-10-105.

Agent not to exceed actual authority, 28-10-301.

Warranty of authority, 28-10-701.

Authority of factor, 30-11-606.

28-10-402. Actual authority defined. Actual authority is such as the principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe himself to possess.

History: En. Sec. 3092, Civ. C. 1895; re-en. Sec. 5431, Rev. C. 1907; re-en. Sec. 7946, R.C.M. 1921; Cal. Civ. C. Sec. 2316; Field Civ. C. Sec. 1234; re-en. Sec. 7946, R.C.M. 1935; R.C.M. 1947, 2-123.

Cross-References

Actual versus ostensible agency, 28-10-103.

Authority of factor, 30-11-606.

28-10-403. Ostensible authority defined. Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

History: En. Sec. 3093, Civ. C. 1895; re-en. Sec. 5432, Rev. C. 1907; re-en. Sec. 7947, R.C.M. 1921; Cal. Civ. C. Sec. 2317; Field Civ. C. Sec. 1235; re-en. Sec. 7947, R.C.M. 1935; R.C.M. 1947, 2-124.

Cross-References

Actual versus ostensible agency, 28-10-103.

Ostensible authority, 30-11-607.

28-10-404. When and as to whom agent's authority restricted. Every agent has actually such authority as is defined by this chapter and parts 5 and 6 of chapter 11 of Title 30 unless specially deprived thereof by his principal and has even then such authority ostensibly except as to persons who have actual or constructive notice of the restriction upon his authority.

History: En. Sec. 3094, Civ. C. 1895; re-en. Sec. 5433, Rev. C. 1907; re-en. Sec. 7948, R.C.M. 1921; Cal. Civ. C. Sec. 2318; Field Civ. C. Sec. 1236; re-en. Sec. 7948, R.C.M. 1935; R.C.M. 1947, 2-125; amd. Sec. 31, Ch. 117, L. 1979.

Cross-References

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

28-10-405. Implied powers of agent. An agent has authority to:

(1) do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and

(2) make a representation respecting any matter of fact, except the terms of his authority, upon which his right to use his authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

History: En. Sec. 3095, Civ. C. 1895; re-en. Sec. 5434, Rev. C. 1907; re-en. Sec. 7949, R.C.M. 1921; Cal. Civ. C. Sec. 2319; Field Civ. C. Sec. 1237; re-en. Sec. 7949, R.C.M. 1935; R.C.M. 1947, 2-126; amd. Sec. 32, Ch. 117, L. 1979.

Cross-References

What acts agent may perform, 28-10-105.

Auctioneer's authority from the seller, 30-11-506.

Auctioneer's authority from the bidder, 30-11-507.

Authority of factor, 30-11-606.

28-10-406. Interpretation of authority given partly in general and partly in specific terms. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

History: En. Sec. 3097, Civ. C. 1895; re-en. Sec. 5436, Rev. C. 1907; re-en. Sec. 7951, R.C.M. 1921; Cal. Civ. C. Sec. 2321; Field Civ. C. Sec. 1239; re-en. Sec. 7951, R.C.M. 1935; R.C.M. 1947, 2-128.

Cross-References

What acts agent may perform, 28-10-105.

28-10-407. Statutory exceptions to general authority. An authority expressed in general terms, however broad, does not authorize an agent to:

(1) act in his own name unless it is the usual course of business to do so;

(2) define the scope of his agency; or

(3) do any act which a trustee is forbidden to do by Title 72, chapter 34.

History: En. Sec. 3098, Civ. C. 1895; re-en. Sec. 5437, Rev. C. 1907; re-en. Sec. 7952, R.C.M. 1921; Cal. Civ. C. Sec. 2322; Field Civ. C. Sec. 1240; re-en. Sec. 7952, R.C.M. 1935; R.C.M. 1947, 2-129.

Cross-References

What acts agent may perform, 28-10-105.

Agent not to exceed actual authority, 28-10-301.

What authority agent has, 28-10-401.

Auctioneer's authority from the seller, 30-11-506.

Authority of factor, 30-11-606.

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

28-10-408. When agent may disobey instructions. An agent has power to disobey instructions in dealing with the subject of the agency in cases where it is clearly for the interest of his principal that he should do so and there is not time to communicate with the principal.

History: En. Sec. 3096, Civ. C. 1895; re-en. Sec. 5435, Rev. C. 1907; re-en. Sec. 7950, R.C.M. 1921; Cal. Civ. C. Sec. 2320; Field Civ. C. Sec. 1238; re-en. Sec. 7950, R.C.M. 1935; R.C.M. 1947, 2-127.

Cross-References

How agent's act ratified, 28-10-211.

28-10-409. No authority to defraud principal. An agent can never have authority, either actual or ostensible, to do an act which is and is known or suspected by the person with whom he deals to be a fraud upon the principal.

History: En. Sec. 3082, Civ. C. 1895; re-en. Sec. 5421, Rev. C. 1907; re-en. Sec. 7936, R.C.M. 1921; Cal. Civ. C. Sec. 2306; Field Civ. C. Sec. 1224; re-en. Sec. 7936, R.C.M. 1935; R.C.M. 1947, 2-113.

Cross-References

Arrest of agent for misconduct, 27-16-102.

Principal's consent needed to relieve factor from liability, 30-11-605.

Partnership bound by partner's breach of trust, 35-10-306.

28-10-410 through 28-10-420 reserved.

28-10-421. What included in authority to sell personal property. An authority to sell personal property includes authority to warrant the title of the principal and the quantity and quality of the property.

History: En. Sec. 3099, Civ. C. 1895; re-en. Sec. 5438, Rev. C. 1907; re-en. Sec. 7953, R.C.M. 1921; Cal. Civ. C. Sec. 2323; Field Civ. C. Sec. 1241; re-en. Sec. 7953, R.C.M. 1935; R.C.M. 1947, 2-130.

Cross-References

Auctioneer's authority from the seller, 30-11-506.

28-10-422. What included in authority to sell real property. An authority to sell and convey real property includes authority to give the usual covenants of warranty.

History: En. Sec. 3100, Civ. C. 1895; re-en. Sec. 5439, Rev. C. 1907; re-en. Sec. 7954, R.C.M. 1921; Cal. Civ. C. Sec. 2324; Field Civ. C. Sec. 1242; re-en. Sec. 7954, R.C.M. 1935; R.C.M. 1947, 2-131.

Cross-References

Authority to be in writing, 28-2-903.

Usual common-law covenants required by real property contracts — when, 30-11-109.

Contract for sale of real property, 30-11-111.

Covenants running with the land, Title 70, ch. 17, part 2.

28-10-423. Authority of agent to sell to receive price. A general agent to sell who is entrusted by the principal with the possession of the thing sold has authority to receive the price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

History: En. Secs. 3101, 3102, Civ. C. 1895; re-en. Secs. 5440, 5441, Rev. C. 1907; re-en. Secs. 7955, 7956, R.C.M. 1921; Cal. Civ. C. Secs. 2325, 2326; Field Civ. C. Secs. 1243, 1244; re-en. Secs. 7955, 7956, R.C.M. 1935; R.C.M. 1947, 2-132, 2-133.

Cross-References

Person in the position of a seller, 30-2-707.

Auctioneer's authority from the seller, 30-11-506.

Factor defined, 30-11-601.

Partnership bound by partner's breach of trust, 35-10-306.

Servant to pay over without demand, 39-2-605.

Part 5

Subagents

28-10-501. When agent may delegate powers. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases and in no others:

(1) when the act to be done is purely mechanical;

(2) when it is such as the agent cannot himself and the subagent can lawfully perform;

(3) when it is the usage of the place to delegate such powers; or

(4) when such delegation is specially authorized by the principal.

History: En. Sec. 3140, Civ. C. 1895; re-en. Sec. 5456, Rev. C. 1907; re-en. Sec. 7971, R.C.M. 1921; Cal. Civ. C. Sec. 2349; Field Civ. C. Sec. 1259; re-en. Sec. 7971, R.C.M. 1935; R.C.M. 1947, 2-301.

Cross-References

University system as agent, 17-2-102.

Auctioneer's assistant — who may act and when, 30-11-512.

Authority of factor, 30-11-606.

28-10-502. Effect of unauthorized employment of subagent. If an agent employs a subagent without authority, the former is a principal and the latter his agent and the principal of the former has no connection with the latter. A mere agent of an agent is not responsible as such to the principal of the latter.

History: En. Secs. 2743, 3141, Civ. C. 1895; re-en. Secs. 5289, 5457, Rev. C. 1907; re-en. Secs. 7804, 7972, R.C.M. 1921; Cal. Civ. C. Secs. 2022, 2350; Field Civ. C. Secs. 1044, 1260; re-en. Secs. 7804, 7972, R.C.M. 1935; R.C.M. 1947, 2-112, 2-302.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

28-10-503. Effect of authorized employment of subagent. A subagent lawfully appointed represents the principal in like manner with the original agent, and the original agent is not responsible to third persons for the acts of the subagent.

History: En. Sec. 3142, Civ. C. 1895; re-en. Sec. 5458, Rev. C. 1907; re-en. Sec. 7973, R.C.M. 1921; Cal. Civ. C. Sec. 2351; Field Civ. C. Sec. 1261; re-en. Sec. 7973, R.C.M. 1935; R.C.M. 1947, 2-303.

Cross-References

Auctioneer's assistant — who may act and when, 30-11-512.

Authority of factor, 30-11-606.

Part 6

Rights and Liabilities of Principal

Part Cross-References

Rules determining rights and duties of partners, 35-10-401.

28-10-601. Accrual of rights and liabilities to principal. An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

History: En. Sec. 3110, Civ. C. 1895; re-en. Sec. 5442, Rev. C. 1907; re-en. Sec. 7957, R.C.M. 1921; Cal. Civ. C. Sec. 2330; Field Civ. C. Sec. 1245; re-en. Sec. 7957, R.C.M. 1935; R.C.M. 1947, 2-201.

Cross-References

What acts agent may perform, 28-10-105.

What authority agent has, 28-10-401.

Implied powers of agent, 28-10-405.

Signature by authorized representative, 30-3-403.

Rights acquired by due negotiation, 30-7-502.

Auctioneer's authority from the seller, 30-11-506.

Authority of factor, 30-11-606.

Partnership liable for partner's wrongful act, 35-10-305.

Partnership bound by partner's breach of trust, 35-10-306.

Nature of partner's liability, 35-10-307.

Liability of railway corporation for negligence of fellow servants, 39-2-703.

Liability of mining company for negligence of fellow servants, 39-2-704.

Contract discharging employer liability for negligence void, 39-2-705.

28-10-602. Principal's responsibility for agent's negligence, omissions, and wrongs. (1) Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal.

(2) A principal is responsible for no other wrongs committed by his agent than those mentioned in subsection (1) unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

History: **En. Secs. 3118, 3119, Civ. C. 1895; re-en. Secs. 5450, 5451, Rev. C. 1907; re-en. Secs. 7965, 7966, R.C.M. 1921; Cal. Civ. C. Secs. 2338, 2339; Field Civ. C. Secs. 1253, 1254; re-en. Secs. 7965, 7966, R.C.M. 1935; R.C.M. 1947, 2-209, 2-210.**

Cross-References

Arrest of agent for misconduct, 27-16-102.

When agent responsible to third persons as a principal, 28-10-702.

Partnership liable for partner's wrongful act, 35-10-305.

When servant may be discharged, 39-2-606.

Liability of railway corporation for negligence of fellow servants, 39-2-703.

Liability of mining company for negligence of fellow servants, 39-2-704.

28-10-603. When instrument binds principal. An instrument within the scope of his authority by which an agent intends to bind his principal does bind him if such intent is plainly inferable from the instrument itself.

History: **En. Sec. 3117, Civ. C. 1895; re-en. Sec. 5449, Rev. C. 1907; re-en. Sec. 7964, R.C.M. 1921; Cal. Civ. C. Sec. 2337; Field Civ. C. Sec. 1252; re-en. Sec. 7964, R.C.M. 1935; R.C.M. 1947, 2-208.**

Cross-References

Authority of agent, Title 28, ch. 10, part 4.

Auctioneer's authority from the seller, 30-11-506.

Authority of factor, 30-11-606.

28-10-604. When notice to principal or agent is notice to the other. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

History: **En. Sec. 3112, Civ. C. 1895; re-en. Sec. 5444, Rev. C. 1907; re-en. Sec. 7959, R.C.M. 1921; Cal. Civ. C. Sec. 2332; Field Civ. C. Sec. 1247; re-en. Sec. 7959, R.C.M. 1935; R.C.M. 1947, 2-203.**

Cross-References

Notice of dishonor, 30-3-508.

Obedience required from factor, 30-11-602.

Partnership charged with knowledge of or notice to partner, 35-10-304.

Mining, defective locations good against persons with notice, 82-2-112.

28-10-605. Extent to which principal bound when agent exceeds authority. When an agent exceeds his authority, his principal is bound by his authorized acts only so far as they can be plainly separated from those which are unauthorized.

History: **En. Sec. 3113, Civ. C. 1895; re-en. Sec. 5445, Rev. C. 1907; re-en. Sec. 7960, R.C.M. 1921; Cal. Civ. C. Sec. 2333; Field Civ. C. Sec. 1248; re-en. Sec. 7960, R.C.M. 1935; R.C.M. 1947, 2-204.**

Cross-References

Principal's consent needed to relieve factor from liability, 30-11-605.

Partnership liable for partner's wrongful act, 35-10-305.

28-10-606. Extent to which principal bound by acts under ostensible authority. A principal is bound by acts of his agent under a merely ostensible authority to those persons only who have in good faith and without ordinary negligence incurred a liability or parted with value upon the faith thereof.

History: En. Sec. 3114, Civ. C. 1895; re-en. Sec. 5446, Rev. C. 1907; re-en. Sec. 7961, R.C.M. 1921; Cal. Civ. C. Sec. 2334; Field Civ. C. Sec. 1249; re-en. Sec. 7961, R.C.M. 1935; R.C.M. 1947, 2-205.

Cross-References

Ostensible authority defined, 28-10-403.

Ostensible authority, 30-11-607.

28-10-607. When principal bound by incomplete execution of authority. A principal is bound by an incomplete execution of an authority when it is consistent with the whole purpose and scope thereof, but not otherwise.

History: En. Sec. 3111, Civ. C. 1895; re-en. Sec. 5443, Rev. C. 1907; re-en. Sec. 7958, R.C.M. 1921; Cal. Civ. C. Sec. 2331; Field Civ. C. Sec. 1246; re-en. Sec. 7958, R.C.M. 1935; R.C.M. 1947, 2-202.

Cross-References

Interpretation of authority given partly in general and partly in specific terms, 28-10-406.

28-10-608. Rights of person who deals with agent without knowledge of agency. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction may set off against any claim of the principal arising out of the same all claims which he might have set off against the agent before notice of the agency.

History: En. Sec. 3116, Civ. C. 1895; re-en. Sec. 5448, Rev. C. 1907; re-en. Sec. 7963, R.C.M. 1921; Cal. Civ. C. Sec. 2336; Field Civ. C. Sec. 1251; re-en. Sec. 7963, R.C.M. 1935; R.C.M. 1947, 2-207.

Cross-References

Principal's consent needed to relieve factor from liability, 30-11-605.

28-10-609. Principal's liability when agent given exclusive credit. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith before receiving notice of the creditor's election to hold him responsible.

History: En. Sec. 3115, Civ. C. 1895; re-en. Sec. 5447, Rev. C. 1907; re-en. Sec. 7962, R.C.M. 1921; Cal. Civ. C. Sec. 2335; Field Civ. C. Sec. 1250; re-en. Sec. 7962, R.C.M. 1935; R.C.M. 1947, 2-206.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

Sales on credit, 30-11-603.

Nature of partner's liability, 35-10-307.

Part 7

Agent's Responsibility to Third Persons

28-10-701. Warranty of authority. One who assumes to act as an agent thereby warrants to all who deal with him in that capacity that he has the authority which he assumes.

History: En. Sec. 3130, Civ. C. 1895; re-en. Sec. 5452, Rev. C. 1907; re-en. Sec. 7967, R.C.M. 1921; Cal. Civ. C. Sec. 2342; Field Civ. C. Sec. 1255; re-en. Sec. 7967, R.C.M. 1935; R.C.M. 1947, 2-211.

Cross-References

Breach of warranty of agent's authority, 27-1-313.

What included in authority to sell personal property, 28-10-421.

What included in authority to sell real property, 28-10-422.

Auctioneer's authority from the seller, 30-11-506.

Authority of factor, 30-11-606.

28-10-702. When agent responsible to third persons as a principal. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency in any of the following cases and in no other:

(1) when, with his consent, credit is given to him personally in a transaction;

(2) when he enters into a written contract in the name of his principal without believing in good faith that he has authority to do so; or

(3) when his acts are wrongful in their nature.

History: En. Sec. 3131, Civ. C. 1895; re-en. Sec. 5453, Rev. C. 1907; re-en. Sec. 7968, R.C.M. 1921; Cal. Civ. C. Sec. 2343; Field Civ. C. Sec. 1256; re-en. Sec. 7968, R.C.M. 1935; R.C.M. 1947, 2-212.

Cross-References

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Effect of unauthorized employment of subagent, 28-10-502.

Principal's responsibility for agent's negligence, omissions, and wrongs, 28-10-602.

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Liability of factor under guaranty commission, 30-11-604.

Persons responsible for unfair trade practices, 30-14-203.

28-10-703. Responsibility of agent when third person claims property received for principal. If an agent receives anything for the benefit of his principal to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same. He is responsible therefor if, after such demand, he delivers it to his principal.

History: En. Sec. 3132, Civ. C. 1895; re-en. Sec. 5454, Rev. C. 1907; re-en. Sec. 7969, R.C.M. 1921; Cal. Civ. C. Sec. 2344; Field Civ. C. Sec. 1257; re-en. Sec. 7969, R.C.M. 1935; R.C.M. 1947, 2-213; amd. Sec. 33, Ch. 117, L. 1979.

Cross-References

Auctioneer's authority from the seller, 30-11-506.

Principal's consent needed to relieve factor from liability, 30-11-605.

Servant to pay over without demand, 39-2-605.

28-10-704. Applicability of laws relating to capacity to contract. The provisions of this part are subject to the provisions of chapter 2, part 2; 28-10-104; and Title 41, chapter 1.

History: En. Sec. 3133, Civ. C. 1895; re-en. Sec. 5455, Rev. C. 1907; re-en. Sec. 7970, R.C.M. 1921; Cal. Civ. C. Sec. 2345; Field Civ. C. Sec. 1258; re-en. Sec. 7970, R.C.M. 1935; R.C.M. 1947, 2-214; amd. Sec. 34, Ch. 117, L. 1979.

Part 8

Termination of Agency

28-10-801. Circumstances which terminate any agency. An agency is terminated as to every person having notice thereof by:

(1) the expiration of its term;
(2) the extinction of its subject;
(3) the death of the agent;
(4) his renunciation of the agency; or
(5) the incapacity of the agent to act as such.

History: En. Sec. 3150, Civ. C. 1895; re-en. Sec. 5459, Rev. C. 1907; re-en. Sec. 7974, R.C.M. 1921; Cal. Civ. C. Sec. 2355; Field Civ. C. Sec. 1262; re-en. Sec. 7974, R.C.M. 1935; R.C.M. 1947, 2-304.

Cross-References

Termination of employment, Title 39, ch. 2, part 5.

When servant may be discharged, 39-2-606.

28-10-802. Circumstances which terminate agency not coupled with an interest. Unless the power of the agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof by:

(1) its revocation by the principal;
(2) his death; or
(3) his incapacity to contract.

History: En. Sec. 3151, Civ. C. 1895; re-en. Sec. 5460, Rev. C. 1907; re-en. Sec. 7975, R.C.M. 1921; Cal. Civ. C. Sec. 2356; Field Civ. C. Sec. 1263; re-en. Sec. 7975, R.C.M. 1935; R.C.M. 1947, 2-305.

Cross-References

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CHAPTER 11

GUARANTY, INDEMNITY, AND SURETYSHIP

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Part 1

Guaranty — General Provisions

Part Cross-References

Contract of accommodation party — commercial paper, 30-3-415.

Insurance guaranty associations, Title 33, ch. 10.

28-11-101. Guaranty defined. A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

History: En. Sec. 3600, Civ. C. 1895; re-en. Sec. 5656, Rev. C. 1907; re-en. Sec. 8171, R.C.M. 1921; Cal. Civ. C. Sec. 2787; Field Civ. C. Sec. 1534; re-en. Sec. 8171, R.C.M. 1935; R.C.M. 1947, 30-101.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Suretyship, Title 28, ch. 11, part 4.

28-11-102. Knowledge or consent of principal not required. A person may become guarantor even without the knowledge or consent of the principal.

History: En. Sec. 3601, Civ. C. 1895; re-en. Sec. 5657, Rev. C. 1907; re-en. Sec. 8172, R.C.M. 1921; Cal. Civ. C. Sec. 2788; Field Civ. C. Sec. 1535; re-en. Sec. 8172, R.C.M. 1935; R.C.M. 1947, 30-102.

Cross-References

Consideration, Title 28, ch. 2, part 8.

28-11-103. When separate consideration required. Where a guaranty is entered into at the same time with the original obligation or with the acceptance of the latter by the guarantee and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases, there must be a consideration distinct from that of the original obligation.

History: En. Sec. 3610, Civ. C. 1895; re-en. Sec. 5658, Rev. C. 1907; re-en. Sec. 8173, R.C.M. 1921; Cal. Civ. C. Sec. 2792; Field Civ. C. Sec. 1536; re-en. Sec. 8173, R.C.M. 1935; R.C.M. 1947, 30-103.

Cross-References

Consideration, Title 28, ch. 2, part 8.

28-11-104. Guaranty generally to be in writing — form. Except as prescribed by 28-11-105, a guaranty must be in writing and signed by the guarantor, but the writing need not express a consideration.

History: En. Sec. 3611, Civ. C. 1895; re-en. Sec. 5659, Rev. C. 1907; re-en. Sec. 8174, R.C.M. 1921; Cal. Civ. C. Sec. 2793; Field Civ. C. Sec. 1537; re-en. Sec. 8174, R.C.M. 1935; R.C.M. 1947, 30-104.

Cross-References

What contracts must be in writing, 28-2-903.

28-11-105. When guaranty considered original obligation and need not be in writing. A promise to answer for the obligation of another in any of the following cases is deemed an original obligation of the promisor and need not be in writing:

(1) where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise or by one who has received a discharge from an obligation, in whole or in part, in consideration of such promise;

(2) where the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor and the person in whose behalf it is made his surety;

(3) where the promise, being for an antecedent obligation of another, is made upon a consideration:

(a) that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor;

(b) that the party receiving it releases the property of another from a levy; or

(c) beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person;

(4) where a factor undertakes to sell merchandise for a commission and guarantee the sale;

(5) where the holder of an instrument for the payment of money upon which a third person is or may become liable to him transfers it in payment of a precedent debt of his own or for a new consideration and in connection with such transfer enters into a promise respecting such instrument.

History: En. Sec. 3612, Civ. C. 1895; re-en. Sec. 5660, Rev. C. 1907; re-en. Sec. 8175, R.C.M. 1921; Cal. Civ. C. Sec. 2794; Field Civ. C. Sec. 1538; re-en. Sec. 8175, R.C.M. 1935; R.C.M. 1947, 30-105.

Cross-References

When contracts may be oral, 28-2-901.

What contracts must be in writing, 28-2-903.

Liability of factor under guaranty commission, 30-11-604.

Assignments for the benefit of creditors, Title 31, ch. 2, part 2.

28-11-106. When notice of acceptance necessary to bind guarantor. A mere offer of guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor, but an absolute guaranty is binding upon the guarantor without notice of acceptance.

History: En. Sec. 3613, Civ. C. 1895; re-en. Sec. 5661, Rev. C. 1907; re-en. Sec. 8176, R.C.M. 1921; Cal. Civ. C. Sec. 2795; Field Civ. C. Sec. 1539; re-en. Sec. 8176, R.C.M. 1935; amd. Sec. 6, Ch. 185, L. 1977; R.C.M. 1947, 30-106.

Cross-References

Construction of the terms of a notice, 1-4-108.

28-11-107. When guaranty considered unconditional. A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

History: En. Sec. 3630, Civ. C. 1895; re-en. Sec. 5666, Rev. C. 1907; re-en. Sec. 8181, R.C.M. 1921; Cal. Civ. C. Sec. 2806; Field Civ. C. Sec. 1544; re-en. Sec. 8181, R.C.M. 1935; R.C.M. 1947, 30-201.

Cross-References

Conditions precedent, Rule 9(c), M.R.Civ.P. (see Title 25, ch. 20).

Condition precedent defined, 28-1-403.

Acceptance to be absolute, 28-2-504.

Liability upon guaranty of conditional obligation — notice of default, 28-11-206.

28-11-108. Continuing guaranty — definition, revocation. (1) A guaranty relating to a future liability of the principal under successive transactions which either continue his liability or from time to time renew it after it has been satisfied is called a continuing guaranty.

(2) A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions unless there is a continuing consideration as to such transactions which he does not renounce.

History: En. Secs. 3640, 3641, Civ. C. 1895; re-en. Secs. 5671, 5672, Rev. C. 1907; re-en. Secs. 8186, 8187, R.C.M. 1921; Cal. Civ. C. Secs. 2814, 2815; Field Civ. C. Secs. 1549, 1550; re-en. Secs. 8186, 8187, R.C.M. 1935; R.C.M. 1947, 30-206, 30-207.

Cross-References

Consideration, Title 28, ch. 2, part 8.

Part 2

Guaranty — Liability and Exoneration of Guarantor

Part Cross-References

Liability for nonreceipt or misdescription of goods, 30-7-301.

Liability of factor under guaranty commission, 30-11-604.

28-11-201. Obligation of guarantor not to exceed that of principal. The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal, and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

History: En. Sec. 3633, Civ. C. 1895; re-en. Sec. 5669, Rev. C. 1907; re-en. Sec. 8184, R.C.M. 1921; Cal. Civ. C. Sec. 2809; Field Civ. C. Sec. 1547; re-en. Sec. 8184, R.C.M. 1935; R.C.M. 1947, 30-204.

Cross-References

Knowledge or consent of principal not required, 28-11-102.

28-11-202. Liability under guaranty of incomplete contract. In a guaranty of a contract the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

History: En. Sec. 3620, Civ. C. 1895; re-en. Sec. 5662, Rev. C. 1907; re-en. Sec. 8177, R.C.M. 1921; Cal. Civ. C. Sec. 2799; Field. Civ. C. Sec. 1540; re-en. Sec. 8177, R.C.M. 1935; R.C.M. 1947, 30-107.

Cross-References

Interpretation of language according to usage in place of execution, 1-4-106.

What law and usage to govern interpretation, 28-3-102.

28-11-203. Liability under guaranty of illegal contract or contract void against principal. A guarantor is not liable if the contract of the principal is unlawful, but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

History: **En. Sec. 3634, Civ. C. 1895; re-en. Sec. 5670, Rev. C. 1907; re-en. Sec. 8185, R.C.M. 1921; Cal. Civ. C. Sec. 2810; Field Civ. C. Sec. 1548; re-en. Sec. 8185, R.C.M. 1935; R.C.M. 1947, 30-205.**

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Illegal objects and provisions, Title 28, ch. 2, part 7.

28-11-204. Liability under guaranty that obligation is good or collectable. (1) A guaranty to the effect that an obligation is good or is collectable imports that the debtor is solvent and that the demand is collectable by the usual legal proceedings if taken with reasonable diligence.

(2) A guaranty such as is mentioned in subsection (1) is not discharged by an omission to take proceedings upon the principal debt or upon any collateral security for its payment if no part of the debt could have been collected thereby.

(3) In the case mentioned in subsection (1), the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

History: **En. Secs. 3621, 3622, 3623, Civ. C. 1895; re-en. Secs. 5663, 5664, 5665, Rev. C. 1907; re-en. Secs. 8178, 8179, 8180, R.C.M. 1921; Cal. Civ. C. Secs. 2800, 2801, 2802; Field Civ. C. Secs. 1541, 1542, 1543; re-en. Secs. 8178, 8179, 8180, R.C.M. 1935; R.C.M. 1947, 30-108, 30-109, 30-110.**

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Enforcement of contracts, Title 28, ch. 2, part 15.

Insolvency — what constitutes, 31-2-202.

28-11-205. When guarantor of payment or performance becomes liable. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal and without demand or notice.

History: **En. Sec. 3631, Civ. C. 1895; re-en. Sec. 5667, Rev. C. 1907; re-en. Sec. 8182, R.C.M. 1921; Cal. Civ. C. Sec. 2807; Field Civ. C. Sec. 1545; re-en. Sec. 8182, R.C.M. 1935; R.C.M. 1947, 30-202.**

Cross-References

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.

Debtor and creditor relationships, Title 31, ch. 2.

28-11-206. Liability upon guaranty of conditional obligation — notice of default. Where one guarantees a conditional obligation, his liability is commensurate with that of the principal and he is not entitled to notice of the default of the principal unless he is unable, by the exercise of reasonable diligence, to acquire information of such default and the creditor has actual notice thereof.

History: **En. Sec. 3632, Civ. C. 1895; re-en. Sec. 5668, Rev. C. 1907; re-en. Sec. 8183, R.C.M. 1921; Cal. Civ. C. Sec. 2808; Field Civ. C. Sec 1546; re-en. Sec. 8183, R.C.M. 1935; R.C.M. 1947, 30-203.**

Cross-References

Notice — actual and constructive, 1-1-217.

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.

When guaranty considered unconditional, 28-11-107.

Creditor defined, 31-2-102.

28-11-207 through 28-11-210 reserved.

28-11-211. When guarantor exonerated. (1) A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor without the consent of the guarantor the original obligation of the principal is altered in any respect or the remedies or rights of the creditor against the principal in respect thereto are in any way impaired or suspended.

(2) A promise by a creditor which for any cause is void or voidable by him at his option does not alter the obligation or suspend or impair the remedy within the meaning of subsection (1).

History: En. Secs. 3650, 3651, Civ. C. 1895; re-en. Secs. 5673, 5674, Rev. C. 1907; re-en. Secs. 8188, 8189, R.C.M. 1921; Cal. Civ. C. Secs. 2819, 2820; Field Civ. C. Secs. 1551, 1552; re-en. Secs. 8188, 8189, R.C.M. 1935; R.C.M. 1947, 30-208, 30-209.

Cross-References

Contracts in restraint of trade generally void, 28-2-703.

What conditions void, 28-2-707.

Restraints upon legal proceedings void, 28-2-708.

Indemnity, Title 28, ch. 11, part 3.

Exoneration of surety, 28-11-412.

Contracts of debtor are valid, 31-2-103.

28-11-212. Rescission of alteration — liability not restored. The rescission of an agreement altering the original obligation of a debtor or impairing the remedy of a creditor does not restore the liability of a guarantor who has been exonerated by such agreement.

History: En. Sec. 3652, Civ. C. 1895; re-en. Sec. 5675, Rev. C. 1907; re-en. Sec. 8190, R.C.M. 1921; Cal. Civ. C. Sec. 2821; Field Civ. C. Sec. 1553; re-en. Sec. 8190, R.C.M. 1935; R.C.M. 1947, 30-210.

Cross-References

Modification of contracts, Title 28, ch. 2, part 16.

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

Assignments for the benefit of creditors, Title 31, ch. 2, part 2.

28-11-213. Guarantor not exonerated by delay of creditor. Mere delay on the part of a creditor to proceed against the principal or to enforce any other remedy does not exonerate a guarantor.

History: En. Sec. 3654, Civ. C. 1895; re-en. Sec. 5677, Rev. C. 1907; re-en. Sec. 8192, R.C.M. 1921; Cal. Civ. C. Sec. 2823; Field Civ. C. Sec. 1555; re-en. Sec. 8192, R.C.M. 1935; R.C.M. 1947, 30-212.

Cross-References

Restraints upon legal proceedings void, 28-2-708.

28-11-214. Guarantor not exonerated by discharge of principal. A guarantor is not exonerated by the discharge of his principal by operation of law without the intervention or omission of the creditor.

History: En. Sec. 3656, Civ. C. 1895; re-en. Sec. 5679, Rev. C. 1907; re-en. Sec. 8194, R.C.M. 1921; Cal. Civ. C. Sec. 2825; Field Civ. C. Sec. 1557; re-en. Sec. 8194, R.C.M. 1935; R.C.M. 1947, 30-214.

28-11-215. Exoneration of guarantor indemnified by principal. A guarantor who has been indemnified by the principal is liable to the creditor to the extent of the indemnity notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

History: En. Sec. 3655, Civ. C. 1895; re-en. Sec. 5678, Rev. C. 1907; re-en. Sec. 8193, R.C.M. 1921; Cal. Civ. C. Sec. 2824; Field Civ. C. Sec. 1556; re-en. Sec. 8193, R.C.M. 1935; R.C.M. 1947, 30-213.

Cross-References

Release of debtor by creditor, Title 28, ch. 1, part 16.

Indemnity, Title 28, ch. 11, part 3.

28-11-216. Effect of part performance on guarantor's liability. The acceptance by a creditor of anything in partial satisfaction of an obligation reduces the obligation of a guarantor thereof in the same measure as that of the principal but does not otherwise affect it.

History: En. Sec. 3653, Civ. C. 1895; re-en. Sec. 5676, Rev. C. 1907; re-en. Sec. 8191, R.C.M. 1921; Cal. Civ. C. Sec. 2822; Field Civ. C. Sec. 1554; re-en. Sec. 8191, R.C.M. 1935; R.C.M. 1947, 30-211.

Cross-References

When partial performance extinguishes part of obligation, 28-1-1105.

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When part performance extinguishes obligation, 28-1-1403.

Part 3

Indemnity

Part Cross-References

Indemnity for retention of agency money, 17-2-202.

When no indemnity required in issuing duplicate warrant, 17-8-306.

U.C.C. — letters of credit — indemnities, 30-5-113.

Indemnity for inaccuracies in bills of lading, 30-7-301.

Indemnity for registration of investment securities, 30-8-403, 30-8-405.

Foreclosure of security interests in personal property, 30-9-508.

Powers of religious corporations sole — indemnity, 35-3-205(14).

Depositor to indemnify depositary, 70-6-210.

28-11-301. Indemnity defined. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person.

History: En. Sec. 3580, Civ. C. 1895; re-en. Sec. 5648, Rev. C. 1907; re-en. Sec. 8163, R.C.M. 1921; Cal. Civ. C. Sec. 2772; Field Civ. C. Sec. 1524; re-en. Sec. 8163, R.C.M. 1935; R.C.M. 1947, 30-301.

Cross-References

Guaranty defined, 28-11-101.

28-11-302. Indemnity for future unlawful act void. An agreement to indemnify a person against an act thereafter to be done is void if the act be known by such person, at the time of doing it, to be unlawful.

History: En. Sec. 3581, Civ. C. 1895; re-en. Sec. 5649, Rev. C. 1907; re-en. Sec. 8164, R.C.M. 1921; Cal. Civ. C. Sec. 2773; Field Civ. C. Sec. 1525; re-en. Sec. 8164, R.C.M. 1935; R.C.M. 1947, 30-302.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

28-11-303. Indemnity for past wrongful act valid. An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony.

History: En. Sec. 3582, Civ. C. 1895; re-en. Sec. 5650, Rev. C. 1907; re-en. Sec. 8165, R.C.M. 1921; Cal. Civ. C. Sec. 2774; Field Civ. C. Sec. 1526; re-en. Sec. 8165, R.C.M. 1935; R.C.M. 1947, 30-303.

Cross-References

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

28-11-304. Indemnity extended to acts of agents. An agreement to indemnify against the acts of a certain person applies not only to his acts and their consequences but also to those of his agents.

History: En. Sec. 3583, Civ. C. 1895; re-en. Sec. 5651, Rev. C. 1907; re-en. Sec. 8166, R.C.M. 1921; Cal. Civ. C. Sec. 2775; Field Civ. C. Sec. 1527; re-en. Sec. 8166, R.C.M. 1935; R.C.M. 1947, 30-304.

Cross-References

Accrual of rights and liabilities to principal, 28-10-601.

Exoneration of guarantor indemnified by principal, 28-11-215.

Authority of factor, 30-11-606.

Indemnification of employee, 39-2-701.

Liability of assisted entity for obligation resulting from assistance, 44-11-102.

28-11-305. Indemnification of several persons. An agreement to indemnify several persons applies to each unless a contrary intention appears.

History: En. Sec. 3584, Civ. C. 1895; re-en. Sec. 5652, Rev. C. 1907; re-en. Sec. 8167, R.C.M. 1921; Cal. Civ. C. Sec. 2776; Field Civ. C. Sec. 1528; re-en. Sec. 8167, R.C.M. 1935; R.C.M. 1947, 30-305.

Cross-References

Indemnity of partners, 35-10-401.

Indemnification of employee, 39-2-701.

28-11-306 through 28-11-310 reserved.

28-11-311. Person indemnifying liable jointly and severally. Except as provided in 27-1-703, one who indemnifies another against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by such act.

History: En. Sec. 3585, Civ. C. 1895; re-en. Sec. 5653, Rev. C. 1907; re-en. Sec. 8168, R.C.M. 1921; Cal. Civ. C. Sec. 2777; Field Civ. C. Sec. 1529; re-en. Sec. 8168, R.C.M. 1935; R.C.M. 1947, 30-306; amd. Sec. 5, Ch. 253, L. 1987.

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Joint obligations, Title 28, ch. 1, part 3.

Indemnity for enforcement of agisters' lien, 71-3-1203.

28-11-312. When person indemnifying entitled to reimbursement. Where one at the request of another engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

History: **En. Sec. 3587, Civ. C. 1895; re-en. Sec. 5655, Rev. C. 1907; re-en. Sec. 8170, R.C.M. 1921; Cal. Civ. C. Sec. 2779; Field Civ. C. Sec. 1531; re-en. Sec. 8170, R.C.M. 1935; R.C.M. 1947, 30-308.**

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Right to contribution from joint debtors, 28-1-303.

Indemnity in winding up partnership, 35-10-610, 35-10-611.

28-11-313. Interpretation of contract of indemnity. In the interpretation of a contract of indemnity, the rules prescribed in 28-11-314 through 28-11-317 are to be applied unless a contrary intention appears.

History: **En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(part).**

Cross-References

Interpretation of instruments, Title 1, ch. 4, part 1.

Interpretation of contracts, Title 28, ch. 3.

28-11-314. When and what person indemnified entitled to recover. (1) Upon an indemnity against liability, expressly or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

(2) Upon an indemnity against claims, demands, damages, or costs, expressly or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

History: **En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(1), (2).**

Cross-References

When guarantor of payment or performance becomes liable, 28-11-205.

Building and loan associations — requirements of transfer in certain cases, 32-2-212.

28-11-315. Costs of defense. An indemnity against claims, demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith and in the exercise of a reasonable discretion.

History: **En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(3).**

Cross-References

Costs, Title 25, ch. 10.

28-11-316. Duty of person indemnifying to defend. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses if he chooses to do so. If after request the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith is conclusive in his favor against the former.

History: En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(4), (5).

28-11-317. When judgment not conclusive against person indemnifying. (1) If the person indemnifying, whether he is a principal or a surety in the agreement, does not have reasonable notice of the action or proceeding against the person indemnified or is not allowed to control his defense, judgment against the latter is only presumptive evidence against the former.

(2) A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying is inapplicable if he had a good defense upon the merits which by want of ordinary care he failed to establish in the action.

History: En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(6), (7).

Cross-References

Execution of judgment, Title 25, ch. 13.

Evidence — presumptions, Title 26, ch. 1, part 6.

Rules of evidence — presumptions in general, Rule 301, M.R.Ev. (see Title 26, ch. 10).

Exoneration of guarantor indemnified by principal, 28-11-215.

Part 4

Suretyship

Part Cross-References

Security for deposits of public funds, 17-6-103.

Public contracts — bid security, Title 18, ch. 1, part 2.

Public construction contracts — bonding requirements, 18-2-201.

Security for costs — civil procedure, Title 25, ch. 10, part 6.

Undertaking for costs on appeal, Rule 6, M.R.App.P. (see Title 25, ch. 21).

Justification of sureties, 25-33-203.

Qualifications of sureties — bail, 27-16-403.

Liability and exoneration of sureties — bail, Title 27, ch. 16, part 5.

Prejudgment attachment — exceptions to plaintiff's sureties, 27-18-715.

Prejudgment attachment — justification of sureties, 27-18-716.

Prejudgment attachment — defendant's undertaking — justification of sureties, 27-18-722.

Surety insurance, 33-1-211; Title 33, ch. 26.

Security for construction lien, 71-3-551.

28-11-401. Surety defined. A surety is one who, at the request of another and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person or hypothecates property as security therefor.

History: En. Sec. 3670, Civ. C. 1895; re-en. Sec. 5680, Rev. C. 1907; re-en. Sec. 8195, R.C.M. 1921; Cal. Civ. C. Sec. 2831; Field Civ. C. Sec. 1558; re-en. Sec. 8195, R.C.M. 1935; R.C.M. 1947, 30-401.

Cross-References

Guaranty defined, 28-11-101.

U.C.C. — general definitions — "surety", 30-1-201(40).

28-11-402. When apparent principal may show he is a surety. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety except as against persons who have acted on the faith of his apparent character of principal.

History: En. Sec. 3671, Civ. C. 1895; re-en. Sec. 5681, Rev. C. 1907; re-en. Sec. 8196, R.C.M. 1921; Cal. Civ. C. Sec. 2832; Field Civ. C. Sec. 1559; re-en. Sec. 8196, R.C.M. 1935; R.C.M. 1947, 30-402.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

When guaranty considered original obligation and need not be in writing, 28-11-105.

28-11-403. Interpretation of contract of suretyship. In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

History: En. Sec. 3681, Civ. C. 1895; re-en. Sec. 5683, Rev. C. 1907; re-en. Sec. 8198, R.C.M. 1921; Cal. Civ. C. Sec. 2837; Field Civ. C. Sec. 1561; re-en. Sec. 8198, R.C.M. 1935; R.C.M. 1947, 30-404.

Cross-References

Interpretation of instruments, Title 1, ch. 4.

What rules govern interpretation of contracts and other obligations, 28-1-103.

Interpretation of contracts, Title 28, ch. 3.

28-11-404. Suretyship unaffected by judgment against surety. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

History: En. Sec. 3682, Civ. C. 1895; re-en. Sec. 5684, Rev. C. 1907; re-en. Sec. 8199, R.C.M. 1921; Cal. Civ. C. Sec. 2838; Field Civ. C. Sec. 1562; re-en. Sec. 8199, R.C.M. 1935; R.C.M. 1947, 30-405.

Cross-References

Judgment, Title 25, ch. 9; Rules 54 through 62, M.R.Civ.P. (see Title 25, ch. 20).

Principal bound when surety bound, 26-3-104.

When guarantor of payment or performance becomes liable, 28-11-205.

28-11-405 through 28-11-410 reserved.

28-11-411. Extent of surety's liability. A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

History: En. Sec. 3680, Civ. C. 1895; re-en. Sec. 5682, Rev. C. 1907; re-en. Sec. 8197, R.C.M. 1921; Cal. Civ. C. Sec. 2836; Field Civ. C. Sec. 1560; re-en. Sec. 8197, R.C.M. 1935; R.C.M. 1947, 30-403.

Cross-References

Notification to surety by Legislative Auditor, 5-13-304.

Public contracts — bond requirements, Title 18, ch. 2, part 2.

Breach of contract, 27-1-311.

Obligation of guarantor not to exceed that of principal, 28-11-201.

Highway contracts — bidder's security, 60-2-113.

28-11-412. Exoneration of surety. A surety is exonerated:

(1) in like manner with a guarantor;

(2) to the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights or which lessens his security; or

(3) to the extent to which he is prejudiced by an omission of the creditor, when required by the surety, to do anything which it is the creditor's duty to do.

History: En. Sec. 3684, Civ. C. 1895; re-en. Sec. 5686, Rev. C. 1907; re-en. Sec. 8201, R.C.M. 1921; Cal. Civ. C. Sec. 2840; Field Civ. Sec. 1564; re-en. Sec. 8201, R.C.M. 1935; amd. Sec. 8, Ch. 185, L. 1977; R.C.M. 1947, 30-407.

Cross-References

Exoneration of guarantor, 28-11-211.

28-11-413. Effect of performance or offer of performance on surety's liability. Performance of the principal obligation or an offer of such performance, duly made as provided in this code, exonerates a surety.

History: En. Sec. 3683, Civ. C. 1895; re-en. Sec. 5685, Rev. C. 1907; re-en. Sec. 8200, R.C.M. 1921; Cal. Civ. C. Sec. 2839; Based on Field Civ. C. Sec. 1563; re-en. Sec. 8200, R.C.M. 1935; R.C.M. 1947, 30-406.

Cross-References

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Effect of part performance on guarantor's liability, 28-11-216.

28-11-414. Application to surety of rights of guarantor. A surety has all the right of a guarantor, whether he becomes personally responsible or not.

History: En. Sec. 3690, Civ. C. 1895; re-en. Sec. 5687, Rev. C. 1907; re-en. Sec. 8202, R.C.M. 1921; Cal. Civ. C. Sec. 2844; Field Civ. C. Sec. 1565; re-en. Sec. 8202, R.C.M. 1935; R.C.M. 1947, 30-501.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

28-11-415. Power of surety to compel principal to perform. A surety may compel his principal to perform the obligations when due.

History: En. Sec. 3692, Civ. C. 1895; re-en. Sec. 5689, Rev. C. 1907; re-en. Sec. 8204, R.C.M. 1921; Cal. Civ. C. Sec. 2846; Field Civ. C. Sec. 1567; re-en. Sec. 8204, R.C.M. 1935; R.C.M. 1947, 30-503.

Cross-References

When guarantor of payment or performance becomes liable, 28-11-205.

28-11-416. When surety may require creditor to pursue remedy. A surety may require his creditor to proceed against the principal or to pursue any other remedy in his power which the surety cannot himself pursue and which would lighten his burden, and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

History: En. Sec. 3691, Civ. C. 1895; re-en. Sec. 5688, Rev. C. 1907; re-en. Sec. 8203, R.C.M. 1921; Cal. Civ. C. Sec. 2845; Field Civ. C. Sec. 1566; re-en. Sec. 8203, R.C.M. 1935; R.C.M. 1947, 30-502.

Cross-References

Guarantor not exonerated by discharge of principal, 28-11-214.

28-11-417. Surety's right to reimbursement and contribution. (1) If a surety satisfies the principal obligation or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what the surety has disbursed, including necessary costs and expenses, but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by subsection (2).

(2) A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what the surety has expended and also to require all his cosureties to contribute thereto without regard to the order of time in which they became such.

History: **En. Secs. 3693, 3694, Civ. C. 1895; re-en. Secs. 5690, 5691, Rev. C. 1907; re-en. Secs. 8205, 8206, R.C.M. 1921; Cal. Civ. C. Secs. 2847, 2848; Field Civ. C. Secs. 1568, 1569; re-en. Secs. 8205, 8206, R.C.M. 1935; R.C.M. 1947, 30-504, 30-505.**

Cross-References

Compelling contribution or repayment — joint debtor, surety, 25-13-104.

Subrogation of surety on appeal bond, 25-13-105.

28-11-418. Surety entitled to benefit of security held by creditor or cosurety. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by him afterwards, whether the surety was aware of the security or not.

History: **En. Sec. 3695, Civ. C. 1895; re-en. Sec. 5692, Rev. C. 1907; re-en. Sec. 8207, R.C.M. 1921; Cal. Civ. C. Sec. 2849; Field Civ. C. Sec. 1570; re-en. Sec. 8207, R.C.M. 1935; R.C.M. 1947, 30-506.**

28-11-419. Creditor entitled to benefit of security held by surety. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

History: **En. Sec. 3700, Civ. C. 1895; re-en. Sec. 5694, Rev. C. 1907; re-en. Sec. 8209, R.C.M. 1921; Cal. Civ. C. Sec. 2854; Field Civ. C. Sec. 1572; re-en. Sec. 8209, R.C.M. 1935; R.C.M. 1947, 30-508.**

28-11-420. Principal's property to be taken first. Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

History: **En. Sec. 3696, Civ. C. 1895; re-en. Sec. 5693, Rev. C. 1907; re-en. Sec. 8208, R.C.M. 1921; Cal. Civ. C. Sec. 2850; Field Civ. C. Sec. 1571; re-en. Sec. 8208, R.C.M. 1935; R.C.M. 1947, 30-507.**

Cross-References

Guarantor not exonerated by discharge of principal, 28-11-214.

TITLE 29

RESERVED

TITLE 30

TRADE AND COMMERCE

Ch.

1. Uniform Commercial Code - General Provisions.
2. Uniform Commercial Code - Sales.
2A. Uniform Commercial Code - Leases.
3. Uniform Commercial Code - Commercial Paper.
4. Uniform Commercial Code - Bank Deposits and Collections.
4A. Uniform Commercial Code - Funds Transfers.
5. Uniform Commercial Code - Letters of Credit.
6. Uniform Commercial Code - Bulk Transfers.
7. Uniform Commercial Code - Warehouse Receipts, Bills of Lading, and Other Documents of Title.
8. Uniform Commercial Code - Investment Securities.
9. Uniform Commercial Code - Secured Transactions.
10. Securities Regulation.
11. Sales.
12. Weights, Measures, Standards, and Labeling.
13. Assumed Business Names, Trademarks, and Related Rights.
14. Unfair Trade Practices and Consumer Protection.
15. Foreign-Trade Zones.
16. Small Business Licensing Coordination.

CHAPTER 1

UNIFORM COMMERCIAL CODE
GENERAL PROVISIONS

Part 1 — Short Title, Construction, Application, and Subject Matter of the Code

30-1-101. Short title.
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30-1-103. Supplementary general principles of law applicable.
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Part 1

Short Title, Construction, Application, and Subject Matter of the Code

30-1-101. Short title. (1) Chapters 1 through 9 of this title shall be known and may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9 of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise.

History: En. Sec. 1-101, Ch. 264, L. 1963; amd. Sec. 12, Ch. 265, L. 1977; R.C.M. 1947, 87A-1-101.

30-1-102. Purposes — rules of construction — variation by agreement. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this code are:

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations are to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this code unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

History: En. Sec. 1-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-102.

30-1-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

History: En. Sec. 1-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-103.

Cross-References

Contracts and Other Obligations, Title 28.

Debtor and creditor relationships, Title 31, ch. 2.

Uniform Fraudulent Conveyances Act, Title 31, ch. 2, part 3; Title 70, ch. 20, part 4.

30-1-104. Construction against implicit repeal. This code being a general code intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: En. Sec. 1-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-104.

30-1-105. Territorial application of the code — parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.
Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.
Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.
Governing law in the Chapter on Funds Transfers. 30-4A-507.
Applicability of the Chapter on Investment Securities. 30-8-106.
Perfection provisions of the Chapter on Secured Transactions. 30-9-103.

History: En. Sec. 1-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-105; amd. Sec. 1, Ch. 402, L. 1983; amd. Sec. 1, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (2) inserted reference to chapter on leases and reference to chapter on funds transfers and deleted "Bulk transfers subject to the Chapter on Bulk Transfers. 30-6-102".

30-1-106. Remedies to be liberally administered. (1) The remedies provided by this code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this code or by other rule of law.

(2) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: En. Sec. 1-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-106.

Cross-References

GENERAL

Supplementary general principles of law applicable, 30-1-103.

Obligation of good faith, 30-1-203.

Formation in general, 30-2-204.

Remedies for breach of collateral contracts not impaired, 30-2-701.

Seller's resale including contract for resale, 30-2-706.

"Cover" — buyers procurement of substitute goods, 30-2-712.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Action, 30-1-201.

Aggrieved party, 30-1-201.

Party, 30-1-201.

Remedy, 30-1-201.

Rights, 30-1-201.

30-1-107. Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History: En. Sec. 1-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-107.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Formal requirements — Statute of Frauds, 30-2-201.

Modification, rescission and waiver, 30-2-209.

Contractual modification or limitation of remedy, 30-2-719.

DEFINITIONAL

Aggrieved party, 30-1-201.

Rights, 30-1-201.

Signed, 30-1-201.

Written, 30-1-201.

30-1-108. Severability. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

History: En. Sec. 1-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-108.

Cross-References

DEFINITIONAL

Person, 30-1-201.

30-1-109. Section captions. Section captions are parts of this code.

History: En. Sec. 1-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-109.

Cross-References

Effect of Montana Code Annotated, 1-11-103.

30-1-110. Provision for transition. Transactions validly entered into before January 1, 1965, and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this code as though such repeal or amendment had not occurred.

History: En. Sec. 10-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-102.

30-1-111. Laws not repealed. The Chapter on Documents of Title (Chapter 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (30-1-201).

References to a "branch" or "separate office" of a bank in this code are included to preserve uniformity in a Uniform Act and are not to be construed as affecting or amending in any way the laws of this state relative to the operation of branches or separate offices of a bank.

This code does not repeal or modify any of the following provisions: 30-11-504, relating to auctioneer's memorandum of sale; 69-14-216, relating to claims against carriers for damage to livestock; or Title 18, chapter 1, part 4, inclusive, relating to contract actions against the state.

History: En. Sec. 10-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-103.

Part 2

General Definitions and Principles of Interpretation

30-1-201. General definitions. Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for

sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", with respect to a:

(a) negotiable instrument, means the person in possession if the instrument is payable to bearer or to the person in possession;

(b) certified security, means the person in possession is the registered owner, the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

(c) document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper that is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (30-2-326). Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;

(iii) the lessee has an option to renew the lease or to become the owner of the goods;

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or

(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) additional consideration is not nominal if:

(A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;

(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

History: En. Sec. 1-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-201; amd. Sec. 2, Ch. 402, L. 1983; amd. Sec. 2, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted definition of holder for former definition that read: ""Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or endorsed to him or to his order or to bearer or in blank"; at end of definition of money substituted "or intergovernmental organization" for "as a part of its currency"; in definition of security interest, at end of (a), substituted language concerning creation of a lease or security interest and the tests contained in subsections (a)(i) through (a)(iv) for "Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security", inserted (b) concerning transactions that do not create, and inserted (c) concerning additional consideration; in definition of unauthorized, after "signature", deleted "or endorsement"; and made minor changes in style.

30-1-202. Prima facie evidence by third-party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History: En. Sec. 1-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-202.

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.

Contract, 30-1-201.

Genuine, 30-1-201.

30-1-203. Obligation of good faith. Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.

History: En. Sec. 1-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-203.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Option to accelerate at will, 30-1-208.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Substituted performance, 30-2-614.

Excuse by failure of presupposed conditions, 30-2-615.

DEFINITIONAL

Contract, 30-1-201.

Good faith, 30-1-201, 30-2-103.

30-1-204. Time — reasonable time — "seasonably". (1) Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

History: En. Sec. 1-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-204.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.

30-1-205. Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

History: En. Sec. 1-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-205.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Definitions — "merchant" — "between merchants" — "financing agency", 30-2-104.

Formal requirements — Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

Formation in general, 30-2-204.

Course of performance or practical construction, 30-2-208.

General obligation and construction of contract, Title 30, ch. 2, part 3.

Unconscionable contract or clause, 30-2-302.

DEFINITIONAL

Agreement, 30-1-201.

Contract, 30-1-201.
Party, 30-1-201.
Term, 30-1-201.

30-1-206. Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond $5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor of securities (30-8-319) nor to security agreements (30-9-203).

History: En. Sec. 1-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-206.

Cross-References

GENERAL

What contracts must be in writing, 28-2-903.

DEFINITIONAL

Action, 30-1-201.
Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Sale, 30-2-106.
Signed, 30-1-201.
Writing, 30-1-201.

30-1-207. Performance or acceptance under reservation of rights. (1) A party that, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction.

History: En. Sec. 1-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-207; amd. Sec. 3, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) concerning nonapplicability to accord and satisfaction; and made minor changes in style.

Cross-References

GENERAL

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Party, 30-1-201.
Rights, 30-1-201.

30-1-208. Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

History: En. Sec. 1-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-208.

Cross-References

DEFINITIONAL

Burden of establishing, 30-1-201.
Good faith, 30-1-201.
Party, 30-1-201.
Term, 30-1-201.

30-1-209. Subordinated obligations. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

History: En. Sec. 3, Ch. 402, L. 1983.

Cross-References

DEFINITIONAL

Agreement, 30-1-201.
Creditor, 30-1-201.
Debtor, 30-9-105.
Person, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

CHAPTER 2

UNIFORM COMMERCIAL CODE SALES

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30-2-104. Definitions — "merchant" — "between merchants" — "financing agency".
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30-2-719. Contractual modification or limitation of remedy.
30-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach.
30-2-721. Remedies for fraud.
30-2-722. Who can sue third parties for injury to goods.
30-2-723. Proof of market price — time and place.
30-2-724. Admissibility of market quotations.
30-2-725. Statute of limitations in contracts for sale.

Chapter Cross-References

Sales, Title 30, ch. 11.

Retail Installment Sales Act, Title 31, ch. 1, part 2.

State-sponsored credit cards, Title 31, ch. 1, part 6.

Itinerant merchants, 80-3-701.

Sale of agricultural products generally, Title 80, ch. 11.

Regulation of sale of milk, 81-23-102.

Regulation of sale of coal, 82-3-201.

Part 1

Short Title, General Construction, and Subject Matter

30-2-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Sales.

History: En. Sec. 2-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-101.

30-2-102. Scope — certain security and other transactions excluded from this chapter. Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

History: En. Sec. 2-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-102.

Cross-References

GENERAL

Secured transactions, sale of accounts and chattel paper, Title 30, ch. 9.

Sales, Title 30, ch. 11.

Personal solicitation sales, Title 30, ch. 14, part 5.

Lost property, duties of finder, 70-5-101 through 70-5-207.

DEFINITIONAL

Contract, 30-1-201.

Contract for sale, 30-2-106.

Present sale, 30-2-106.

Sale, 30-2-106.

30-2-103. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith", in the case of a merchant, means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Acceptance". 30-2-606.
"Banker's credit". 30-2-325.
"Between merchants". 30-2-104.
"Cancellation". 30-2-106(4).
"Commercial unit". 30-2-105.
"Confirmed credit". 30-2-325.
"Conforming to contract". 30-2-106.
"Contract for sale". 30-2-106.
"Cover". 30-2-712.
"Entrusting". 30-2-403.
"Financing agency". 30-2-104.
"Future goods". 30-2-105.
"Goods". 30-2-105.
"Identification". 30-2-501.
"Installment contract". 30-2-612.
"Letter of credit". 30-2-325.
"Lot". 30-2-105.
"Merchant". 30-2-104.
"Overseas". 30-2-323.
"Person in position of seller". 30-2-707.
"Present sale". 30-2-106.
"Sale". 30-2-106.
"Sale on approval". 30-2-326.
"Sale or return". 30-2-326.
"Termination". 30-2-106.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.
"Consignee". 30-7-102.
"Consignor". 30-7-102.
"Consumer goods". 30-9-109.
"Dishonor". 30-3-512.

"Draft". 30-3-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 2-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-103; amd. Sec. 4, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (3), in citation for "dishonor", substituted "30-3-512" for "30-3-507"; and made minor changes in style.

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

DEFINITIONAL

Person, 30-1-201.

30-2-104. Definitions — "merchant" — "between merchants" — "financing agency". (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (30-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History: En. Sec. 2-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-104.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

C.I.F. and C.&F. terms, 30-2-320.

"Letter of credit" term — "confirmed credit", 30-2-325.

Secured transactions, sale of accounts and chattel paper, Title 30, ch. 9.

Merchant's rights, Title 30, ch. 11, part 3.

Commission merchants, Title 30, ch. 11, part 4.

DEFINITIONAL

Bank, 30-1-201.

Buyer, 30-2-103.

Contract for sale, 30-2-106.

Document of title, 30-1-201.

Draft, 30-3-104.

Goods, 30-2-105.

Person, 30-1-201.

Purchase, 30-1-201.

Seller, 30-2-103.

30-2-105. Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit". (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (30-2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

History: **En. Sec. 2-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-105.**

Cross-References

GENERAL

Formal requirements — Statute of Frauds, 30-2-201.

Insurable interest in goods — manner of identification of goods, 30-2-501.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Fungible, 30-1-201.
Money, 30-1-201.
Present sale, 30-2-106.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-106. Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation". (1) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (30-2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

History: En. Sec. 2-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-106.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Sale defined, 30-11-101.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-107. Goods to be severed from realty — recording. (1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller, but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third-party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

History: En. Sec. 2-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-107; amd. Sec. 4, Ch. 402, L. 1983.

Cross-References

GENERAL

Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit", 30-2-105.

Formal requirements — Statute of Frauds, 30-2-201.

Secured transactions, sale of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Present sale, 30-2-106.
Rights, 30-1-201.
Seller, 30-2-103.

Part 2

Form, Formation, and Readjustment of Contract

30-2-201. Formal requirements — statute of frauds. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (30-2-606).

History: En. Sec. 2-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-201.

Cross-References

GENERAL

Contracts required to be in writing, 28-2-903.

Final written expression — parol or extrinsic evidence, 30-2-202.

Additional terms in acceptance or confirmation, 30-2-207.

Modification, rescission and waiver, 30-2-209.

Price payable in money, goods, realty, or otherwise, 30-2-304.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

DEFINITIONAL

Action, 30-1-201.
Between merchants, 30-2-104.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Notice, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-202. Final written expression — parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade (30-1-205) or by course of performance (30-2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History: En. Sec. 2-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-202.

Cross-References

GENERAL

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Additional terms in acceptance or confirmation, 30-2-207.

Unconscionable contract or clause, 30-2-302.

Exclusion or modification of warranties, 30-2-316.

DEFINITIONAL

Agreement, 30-1-201.
Course of dealing, 30-1-205.
Parties, 30-1-201.
Term, 30-1-201.
Usage of trade, 30-1-205.
Written and writing, 30-1-201.

30-2-203. Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

History: En. Sec. 2-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-203.

Cross-References

GENERAL

Seals, Title 1, ch. 4, part 2.
Firm offers, 30-2-205.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Writing, 30-1-201.

30-2-204. Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

History: En. Sec. 2-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-204.

Cross-References

GENERAL

Essential elements of a contract, 28-2-102.

Supplementary general principles of law applicable, 30-1-103.

Formal requirements — Statute of Frauds, 30-2-201.

Unconscionable contract or clause, 30-2-302.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Term, 30-1-201.

30-2-205. Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History: En. Sec. 2-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-205.

Cross-References

GENERAL

Contracts — communication of consent — revocation of proposal, Title 28, ch. 2, part 5.

Purposes — rule of construction — variation by agreement, 30-1-102.

Formal requirements — Statute of Frauds, 30-2-201.

Unconscionable contract or clause, 30-2-302.

Agreement to sell and buy, 30-11-106.

DEFINITIONAL

Goods, 30-2-105.
Merchant, 30-2-104.
Signed, 30-1-201.
Writing, 30-1-201.

30-2-206. Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History: En. Sec. 2-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-206.

Cross-References

GENERAL

Essential characteristics of consent, 28-2-301.

Agreement to sell and buy, 30-11-106.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.

30-2-207. Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional or different terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular

contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this code.

History: En. Sec. 2-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-207; amd. Sec. 5, Ch. 402, L. 1983.

Cross-References

Effect of written contract on oral agreements, 28-2-904.

Rules of construction, variation by agreement, 30-1-102.

Transactions between merchants, 30-2-104.

Unconscionable contract or clause, 30-2-302.

Buyer's right to inspection of goods, 30-2-513.

Manner and effect of rightful rejection, 30-2-602.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Right to adequate assurance of performance, 30-2-609.

"Installment contract" — breach, 30-2-612.

Substituted performance, 30-2-614.

Excuse by failure of presupposed conditions, 30-2-615.

Procedure on notice claiming excuse, 30-2-616.

Liquidation or limitation of damages — deposits, 30-2-718.

Contractual modification or limitation of remedy, 30-2-719.

30-2-208. Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (30-1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

History: En. Sec. 2-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-208.

Cross-References

Intention of the parties, Title 28, ch. 3, part 3.

Final written expression — parol or extrinsic evidence, 30-2-202.

Modification, rescission and waiver, 30-2-209.

Buyer's rights on improper delivery, 30-2-601.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

30-2-209. Modification, rescission and waiver. (1) An agreement modifying a contract within this chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this chapter (30-2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

History: En. Sec. 2-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-209.

Cross-References

GENERAL

Modification of contracts, Title 28, ch. 2, part 16.

Rescission of contracts, Title 28, ch. 2, part 17.

Obligation of good faith, 30-1-203.

Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation", 30-2-106.

Formal requirements — Statute of Frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

Course of performance or practical construction, 30-2-208.

Excuse by failure of presupposed conditions, 30-2-615.

Procedure on notice claiming excuse, 30-2-616.

DEFINITIONAL

Agreement, 30-1-201.
Between merchants, 30-2-104.
Contract, 30-1-201.
Notification, 30-1-201.
Signed, 30-1-201.
Term, 30-1-201.
Writing, 30-1-201.

30-2-210. Delegation of performance — assignment of rights. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice

to his rights against the assignor demand assurances from the assignee (30-2-609).

History: **En. Sec. 2-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-210.**

Cross-References

GENERAL

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Output, requirements and exclusive dealings, 30-2-306.

Letters of credit, Title 30, ch. 5.

Secured transactions, sale of accounts, contract rights, and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

Part 3

General Obligation and Construction of Contract

Part Cross-References

Interpretation of contracts, Title 28, ch. 3.

30-2-301. General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

History: **En. Sec. 2-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-301.**

Cross-References

GENERAL

Obligations in general, Title 28, ch. 1.

Remedies to be liberally administered, 30-1-106.

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Modification, rescission, and waiver, 30-2-209.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

"Installment contract" — breach, 30-2-612.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

30-2-302. Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

History: **En. Sec. 2-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-302.**

Cross-References

GENERAL

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

DEFINITIONAL

Contract, 30-1-201.

30-2-303. Allocation or division of risks. Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

History: En. Sec. 2-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-303.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

DEFINITIONAL

Agreement, 30-1-201.
Party, 30-1-201.

30-2-304. Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

History: En. Sec. 2-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-304.

Cross-References

GENERAL

Receipt for money, instrument, or property delivered, 28-1-1111.

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Construction against implicit repeal, 30-1-104.

Goods to be severed from realty — recording, 30-2-107.

DEFINITIONAL

Goods, 30-2-105.
Money, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

30-2-305. Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

History: En. Sec. 2-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-305.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Formation in general, 30-2-204.

Options and cooperation respecting performance, 30-2-311.

Anticipatory repudiation, 30-2-610.

Seller's resale including contract for resale, 30-2-706.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Agreement, 30-1-201.
Burden of establishing, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Fault, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Receipt of goods, 30-2-103.
Seller, 30-2-103.
Term, 30-1-201.

30-2-306. Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

History: En. Sec. 2-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-306.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Delegation of performance — assignment of rights, 30-2-210.

Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Good faith, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

30-2-307. Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

History: En. Sec. 2-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-307.

Cross-References

GENERAL

Application of performance when there are several obligations, 28-1-1106.

Manner of seller's tender of delivery, 30-2-503.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Buyer's rights on improper delivery, 30-2-601.

Revocation of acceptance in whole or in part, 30-2-608.

Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Lot, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.

30-2-308. Absence of specified place for delivery. Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

History: En. Sec. 2-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-308.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Manner of seller's tender of delivery, 30-2-503.

Shipment by seller, 30-2-504.

Seller's shipment under reservation, 30-2-505.

Payment by buyer before inspection, 30-2-512.

Collection of documentary drafts, Title 30, ch. 4, part 5.

Letters of credit, Title 30, ch. 5.

Delivery — where made, 30-11-204.

Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Contract for sale, 30-2-106.

Delivery, 30-1-201.

Document of title, 30-1-201.

Goods, 30-2-105.

Party, 30-1-201.

Seller, 30-2-103.

30-2-309. Absence of specific time provisions — notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

History: En. Sec. 2-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-309.

Cross-References

GENERAL

Time of performance, Title 28, ch. 3, part 6.

Obligation of good faith, 30-1-203.

Time — reasonable time — seasonably, 30-1-204.

Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming to contract" — "termination" — "cancellation", 30-2-106.

Formation in general, 30-2-204.

Third party beneficiaries of warranties express or implied, 30-2-318.

C.I.F. and C.&F. terms, 30-2-320.

C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.

Shipment by seller, 30-2-504.

Tender of payment by buyer — payment by check, 30-2-511.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

When documents deliverable on acceptance — when on payment, 30-2-514.

Right to adequate assurance of performance, 30-2-609.

Anticipatory repudiation, 30-2-610.

Seller's remedies in general, 30-2-703.

DEFINITIONAL

Agreement, 30-1-201.

Contract, 30-1-201.

Notification, 30-1-201.

Party, 30-1-201.

Reasonable time, 30-1-204.

Termination, 30-2-106.

30-2-310. Open time for payment or running of credit — authority to ship under reservation. Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (30-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History: En. Sec. 2-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-310.

Cross-References

GENERAL

Absence of specified place for delivery, 30-2-308.

Seller's shipment under reservation, 30-2-505.

Risk of loss in the absence of breach, 30-2-509.

Tender of payment by buyer — payment by check, 30-2-511.

Payment by buyer before inspection, 30-2-512.

Bank deposits and collections, Title 30, ch. 4.

DEFINITIONAL

Buyer, 30-2-103.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Receipt of goods, 30-2-103.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

30-2-311. Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of 30-2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of 30-2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

History: En. Sec. 2-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-311.

Cross-References

GENERAL

Extinction of obligation by performance, Title 28, ch. 1, part 11.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

When delay or failure to perform or offer to perform excused, 28-1-1301.

Obligation of good faith, 30-1-203.

Right to adequate assurance of performance, 30-2-609.

Substituted performance, 30-2-614.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-312. Warranty of title and against infringement — buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

History: En. Sec. 2-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-312.

Cross-References

GENERAL

Title to thing offered, 28-1-1221.

Obligation of good faith, 30-1-203.

Exclusion or modification of warranties, 30-2-316.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Right to adequate assurance of performance, 30-2-609.

Statute of Limitations in contracts for sale, 30-2-725.

Warranty of title to personal property, 30-11-211.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Person, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-313. Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

History: En. Sec. 2-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-313.

Cross-References

GENERAL

Warranty on sale by sample, 28-11-212.

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Course of dealing and usage of trade, 30-1-205.

Modification, rescission, and waiver, 30-2-209.

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Warranty when seller knows that buyer relies on his statements, 30-11-213.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-314. Implied warranty — merchantability — usage of trade. (1) Unless excluded or modified (30-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (30-2-316) other implied warranties may arise from course of dealing or usage of trade.

History: En. Sec. 2-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-314.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Definitions — "merchant" — "between merchants" — "financing agency", 30-2-104.

Implied warranty — fitness for particular purpose, 30-2-315.

Manufacturer's warranty against latent defects, 30-11-215.

Warranty of fitness for particular purpose, 30-11-216.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.

Goods, 30-2-105.
Merchant, 30-2-104.
Seller, 30-2-103.

30-2-315. Implied warranty — fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

History: En. Sec. 2-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-315.

Cross-References

GENERAL

Allocation or division of risks, 30-2-303.

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

Warranty of fitness for particular purpose, 30-11-216.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-316. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty;

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

(d) in sales of cattle, hogs, sheep, or horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease; and

(e) in sales of any seed for planting (including both botanical and vegetative types of seed, whether certified or not), there are no implied warranties, as defined in this chapter, that the seeds are free from disease, virus, or any kind of pathogenic organisms.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719).

History: En. Sec. 2-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-316; amd. Sec. 1, Ch. 95, L. 1979; amd. Sec. 1, Ch. 33, L. 1983.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Course of performance or practical construction, 30-2-208.

Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists, 30-9-206.

No implied warranty in mere contract for sale, 30-11-210.

Effect of general warranty, 30-11-223.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Course of dealing, 30-1-205.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.
Usage of trade, 30-1-205.

30-2-317. Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History: En. Sec. 2-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-317.

Cross-References

GENERAL

Express warranties by affirmation, promise, description, sample, 30-2-313.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

Warranty on sale by sample, 30-11-212.

Effect of general warranty, 30-11-223.

DEFINITIONAL

Party, 30-1-201.

30-2-318. Third-party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

History: En. Sec. 2-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-318.

Cross-References

GENERAL

Implied warranty — merchantability — usage of trade, 30-2-314.

Exclusion or modification of warranties, 30-2-316.

Buyers incidental and consequential damages, 30-2-715.

Liquidation or limitation of damages — deposits, 30-2-718.

Contractual modification or limitation of remedy, 30-2-719.

Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists, 30-9-206.

Manufacturer's warranty against latent defects, 30-11-215.

DEFINITIONAL
Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-319. F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (30-2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (30-2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (30-2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (30-2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History: En. Sec. 2-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-319.

Cross-References

GENERAL
Expense of transportation, 30-11-205.
Transportation, 30-11-207.

DEFINITIONAL
Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Seasonably, 30-1-204.
Seller, 30-2-103.
Term, 30-1-201.

30-2-320. C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History: En. Sec. 2-320, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-320.

Cross-References

Prima facie evidence by third-party documents, 30-1-202.

C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Risk of loss in the absence of breach, 30-2-509.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Letters of credit, Title 30, ch. 5.

Expense of transportation, 30-11-205.

30-2-321. C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.:

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on

the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

History: En. Sec. 2-321, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-321.

Cross-References

GENERAL

C.I.F. and C. & F. terms, 30-2-320.

"No arrival, no sale" terms, 30-2-324.

DEFINITIONAL

Agreement, 30-1-201.

Contract, 30-1-201.

Delivery, 30-1-201.

Goods, 30-2-105.

Seller, 30-2-103.

Term, 30-1-201.

30-2-322. Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed:

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

History: En. Sec. 2-322, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-322.

Cross-References

GENERAL

F.O.B. and F.A.S. terms, 30-2-319.

DEFINITIONAL

Buyer, 30-2-103.

Goods, 30-2-105.

Seller, 30-2-103.

Term, 30-1-201.

30-2-323. Form of bill of lading required in overseas shipment — "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of 30-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject

to the commercial, financing or shipping practices characteristic of international deep water commerce.

History: En. Sec. 2-323, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-323.

Cross-References

GENERAL

Indemnities, 30-5-113.

Bills of lading — special provisions, Title 30, ch. 7, part 3.

DEFINITIONAL

Bill of lading, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Financing agency, 30-2-104.
Person, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

30-2-324. "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identified goods (30-2-613).

History: En. Sec. 2-324, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-324.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Insurable interest in goods — manner of identification of goods, 30-2-501.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Fault, 30-1-201.
Goods, 30-2-105.
Sale, 30-2-106.
Seller, 30-2-103.
Term, 30-1-201.

30-2-325. "Letter of credit" term — "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

History: En. Sec. 2-325, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-325.

Cross-References

GENERAL

Deposit of money offered in payment, 28-1-1225.

Power to transfer — good faith purchase of goods — entrusting, 30-2-403.

Tender of payment by buyer — payment by check, 30-2-511.

Letters of credit, Title 30, ch. 5.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Draft, 30-3-104.
Financing agency, 30-2-104.
Notifies, 30-1-201.
Overseas, 30-2-323.

Purchaser, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.
Term, 30-1-201.

30-2-326. Sale on approval and sale or return — consignment sales and rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery:

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(c) complies with the filing provisions of the Chapter on Secured Transactions (Chapter 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (30-2-201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (30-2-202).

History: **En. Sec. 2-326, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-326.**

Cross-References

GENERAL

Commission merchants, Title 30, ch. 11, part 4.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Creditor, 30-1-201.
Goods, 30-2-105.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-327. Special incidents of sale on approval and sale or return. (1) Under a sale on approval unless otherwise agreed:

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed:

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

History: En. Sec. 2-327, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-327.

Cross-References

GENERAL

Time — reasonable time — "seasonably", 30-1-204.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's rights on improper delivery, 30-2-601.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Notification, 30-1-201.
Notifies, 30-1-201.
Sale on approval, 30-2-326.
Sale or return, 30-2-326.
Seasonably, 30-1-204.
Seller, 30-2-103.

Part 4

Title, Creditors, and Good Faith Purchasers

30-2-401. Passing of title — reservation for security — limited application of this section. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle or cattle being released from auction yards for interstate shipment the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment; and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

History: En. Sec. 2-401, Ch. 264, L. 1963; amd. Sec. 1, Ch. 130, L. 1975; R.C.M. 1947, 87A-2-401; amd. Sec. 1, Ch. 160, L. 1989.

Cross-References

GENERAL

Title to thing offered, 28-1-1221.

Scope — certain security and other transactions excluded from this chapter, 30-2-102.

Rights of seller's creditors against sold goods, 30-2-402.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Buyer's right to goods on seller's insolvency, 30-2-502.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Document of title, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.

30-2-402. Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (30-2-502 and 30-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the

seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) under the provisions of the Chapter on Secured Transactions (Chapter 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

History: En. Sec. 2-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-402.

Cross-References

GENERAL

Thing offered to be kept separate, 28-1-1223.

When a seller must act as a depositary, 30-11-201.

DEFINITIONAL

Contract for sale, 30-2-106.
Creditor, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.
Money, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Sale, 30-2-106.
Seller, 30-2-103.

30-2-403. Power to transfer — good faith purchase of goods — "entrusting". (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9) and documents of title (chapter 7).

History: En. Sec. 2-403, Ch. 264, L. 1963; amd. Sec. 63, Ch. 359, L. 1977; R.C.M. 1947, 87A-2-403; amd. Sec. 5, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (4), after reference to secured transactions, deleted "bulk transfers (chapter 6)".

Cross-References

GENERAL

General duty of care, 28-1-201.

Offer to be made in good faith, 28-1-1209.

Purposes — rules of construction — variation by agreement, 30-1-102.

Supplementary general principles of law applicable, 30-1-103.

Rights of seller's creditors against sold goods, 30-2-402.

"Person in the position of seller", 30-2-707.

Title under warehouse receipt defeated in certain cases, 30-7-205.

Protection of buyers of goods, 30-9-307.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.

Good faith, 30-1-201, 30-2-103.

Goods, 30-2-105.

Merchant, 30-2-104.

Person, 30-1-201.

Purchaser, 30-1-201.

Signed, 30-1-201.

Term, 30-1-201.

Value, 30-1-201.

Part 5

Performance

Part Cross-References

Extinction of obligation by performance, Title 28, ch. 1, part 11.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Prevention of performance, Title 28, ch. 1, part 13.

30-2-501. Insurable interest in goods — manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

History: En. Sec. 2-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-501.

Cross-References

GENERAL

Thing offered to be kept separate, 28-1-1223.

Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit", 30-2-105.

Goods to be severed from realty — recording, 30-2-107.

Absence of specified place for delivery, 30-2-308.

Rights of seller's creditors against sold goods, 30-2-402.

Buyer's right to goods on seller's insolvency, 30-2-502.

Manner of seller's tender of delivery, 30-2-503.

Risk of loss in the absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Seller's remedies in general, 30-2-703.

Commission merchants to acknowledge receipt of property, 30-11-401.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Future goods, 30-2-105.
Goods, 30-2-105.
Notification, 30-1-201.
Party, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-502. Buyer's right to goods on seller's insolvency. (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

History: En. Sec. 2-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-502.

Cross-References

GENERAL

Rights of seller's creditors against sold goods, 30-2-402.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Insolvent, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-503. Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of 30-2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

History: En. Sec. 2-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-503.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Specific matters involving tender, 30-1-205, 30-2-301, 30-2-306 through 30-2-319, 30-2-321, 30-2-504, 30-2-507, 30-2-511, 30-2-513, 30-2-612, 30-2-614.

Course of dealing and usage of trade, 30-1-205.

General obligations of parties, 30-2-301.

Absence of specified place for delivery, 30-2-308.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Effect of seller's tender — delivery in condition, 30-2-507.

Risk of loss in the absence of breach, 30-2-509.

Buyer's right to inspection of goods, 30-2-513.

Substituted performance, 30-2-614.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Delivery on demand, 30-11-203.

Delivery — where made, 30-11-204.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Delivery, 30-1-201.
Dishonor, 30-3-508.
Document of title, 30-1-201.
Draft, 30-3-104.
Goods, 30-2-105.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Receipt of goods, 30-2-103.
Rights, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.
Written, 30-1-201.

30-2-504. Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

History: En. Sec. 2-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-504.

Cross-References

GENERAL

Extinction when directions of creditor followed, 28-1-1104.

Obligation of good faith, 30-1-203.

Options and cooperation respecting performance, 30-2-311.

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

Manner of seller's tender of delivery, 30-2-503.

Buyer's rights on improper delivery, 30-2-601.

Substituted performance, 30-2-614.

Excuse by failure of presupposed conditions, 30-2-615.

Delivery on demand, 30-11-203.

Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Usage of trade, 30-1-205.

30-2-505. Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of 30-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

History: En. Sec. 2-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-505.

Cross-References

GENERAL

When offer may be conditional, 28-1-1211.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

Shipment by seller, 30-2-504.

Seller's stoppage of delivery in transit or otherwise, 30-2-705.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Bill of lading, 30-1-201.
Buyer, 30-2-103.
Consignee, 30-7-102.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Financing agency, 30-2-104.
Goods, 30-2-105.
Holder, 30-1-201.
Person, 30-1-201.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-506. Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

History: En. Sec. 2-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-506.

Cross-References

GENERAL

Rights arising out of obligation transferable, 28-1-1001.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

Bank deposits and collections, Title 30, ch. 4.

Letters of credit, Title 30, ch. 5.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Buyer, 30-2-103.
Document of title, 30-1-201.
Draft, 30-3-104.
Financing agency, 30-2-104.
Good faith, 30-2-103.
Goods, 30-2-105.
Honor, 30-1-201.
Purchase, 30-1-201.
Rights, 30-1-201.
Value, 30-1-201.

30-2-507. Effect of seller's tender — delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

History: En. Sec. 2-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-507.

Cross-References

GENERAL

When obligation extinguished by offer of performance, 28-1-1201.

Offeror to be willing and able to perform, 28-1-1210.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Passing of title, reservation for security, 30-2-401.

Good faith purchase of goods, 30-2-403.

Manner of seller's tender of delivery, 30-2-503.

Tender of payment by buyer — payment by check, 30-2-511.

Buyer's rights on improper delivery, 30-2-601.

Substituted performance, 30-2-614.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Buyer's damages for nondelivery or repudiation, 30-2-713.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-508. Cure by seller of improper tender or delivery — replacement. (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

History: En. Sec. 2-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-508.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.
Offer of partial performance ineffective, 28-1-1203.
Course of dealing and usage of trade, 30-1-205.
Unconscionable contract or clause, 30-2-302.
Tender of payment by buyer — payment by check, 30-2-511.
Buyer's rights on improper delivery, 30-2-601.
Remedies for fraud, 30-2-721.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Money, 30-1-201.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-509. Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (30-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of 30-2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510).

History: En. Sec. 2-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-509.

Cross-References

GENERAL

Shipment by seller, 30-2-504.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Party, 30-1-201.
Receipt of goods, 30-2-103.
Sale on approval, 30-2-326.
Seller, 30-2-103.

30-2-510. Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

History: En. Sec. 2-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-510.

Cross-References

GENERAL

Breach of contract, 27-1-311.

Risk of loss in the absence of breach, 30-2-509.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-511. Tender of payment by buyer — payment by check. (1) Unless otherwise agreed, tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this code on the effect of an instrument on an obligation (30-3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

History: En. Sec. 2-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-511; amd. Sec. 6, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (3) substituted reference to "30-3-310" for "30-3-802"; and made minor change in style.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Deposit of money offered in payment, 28-1-1225.

Delivery in single lot or several lots, 30-2-307.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

Delivery "ex-ship", 30-2-322.

"Letter of credit" term — "confirmed credit", 30-2-325.

Manner of seller's tender of delivery, 30-2-503.

Shipment by seller, 30-2-504.

Effect of seller's tender — delivery on condition, 30-2-507.

Buyer's right to inspection of goods, 30-2-513.

Right to adequate assurance of performance, 30-2-609.

Substituted performance, 30-2-614.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Commercial paper, Title 30, ch. 3.

DEFINITIONAL

Buyer, 30-2-103.
Check, 30-3-104.
Dishonor, 30-3-508.
Party, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.

30-2-512. Payment by buyer before inspection. (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this code (30-5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

History: En. Sec. 2-512, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-512.

Cross-References

GENERAL

Performance or acceptance under reservation of rights, 30-1-207.

Buyer's right to inspection of goods, 30-2-513.

Letters of credit, Title 30, ch. 5.

Warranty when thing cannot be examined by buyer, 30-11-217.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Financing agency, 30-2-104.
Goods, 30-2-105.
Remedy, 30-1-201.
Rights, 30-1-201.

30-2-513. Buyer's right to inspection of goods. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (subsection (3) of 30-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

History: En. Sec. 2-513, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-513.

Cross-References

GENERAL

Production of thing to be delivered, 28-1-1222.

Time — reasonable time — "seasonably", 30-1-204.

Open time for payment or running of credit — authority to ship under reservation, 30-2-310.

Exclusion or modification of warranties, 30-2-316.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Buyer's right to goods on seller's insolvency, 30-2-502.

What constitutes acceptance of goods, 30-2-606.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

Buyer's incidental and consequential damages, 30-2-715.

Examination of shipment, 69-11-424.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Presumed, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

30-2-514. When documents deliverable on acceptance — when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

History: En. Sec. 2-514, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-514.

Cross-References

GENERAL

Receipt for money, instrument, or property delivered, 28-1-1111.

Buyer's right to goods on seller's insolvency, 30-2-502.

Seller's shipment under reservation, 30-2-505.

Effect of seller's tender — delivery on condition, 30-2-507.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

DEFINITIONAL

Delivery, 30-1-201.
Draft, 30-3-104.

30-2-515. Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute:

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

History: En. Sec. 2-515, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-515.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Thing offered to be kept separate, 28-1-1223.

Prima facie evidence by third-party documents, 30-1-202.

Performance or acceptance under reservation of rights, 30-1-207.

Buyer's right to inspection of goods, 30-2-513.

Casualty to identified goods, 30-2-613.

Seller's resale including contract for resale, 30-2-706.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

Bulk transfers, Title 30, ch. 6.

DEFINITIONAL

Conform, 30-2-106.
Goods, 30-2-105.
Notification, 30-1-201.
Party, 30-1-201.

Part 6

Breach, Repudiation, and Excuse

30-2-601. Buyer's rights on improper delivery. Subject to the provisions of this chapter on breach in installment contracts (30-2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (30-2-718 and 30-2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

History: En. Sec. 2-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-601.

Cross-References

GENERAL

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Manner and effect of rightful rejection, 30-2-602.

Delivery — where made, 30-11-204.

Delivery to be within reasonable hours, 30-11-208.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Installment contract, 30-2-612.
Rights, 30-1-201.

30-2-602. Manner and effect of rightful rejection. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (30-2-603 and 30-2-604):

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (subsection (3) of 30-2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (30-2-703).

History: En. Sec. 2-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-602.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Effect of refusal to accept performance before offer, 28-1-1304.

Time — reasonable time — "seasonably", 30-1-204.

Payment by buyer before inspection, 30-2-512.

Buyer's right to inspection of goods, 30-2-513.

Improper delivery, buyer's rights, 30-2-601.

What constitutes acceptance of goods, 30-2-606.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Goods, 30-2-105.
Merchant, 30-2-104.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Remedy, 30-1-201.
Rights, 30-1-201.
Seasonably, 30-1-204.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-603. Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of 30-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

History: En. Sec. 2-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-603.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Remedies to be liberally administered, 30-1-106.

Seller's resale including contract for resale, 30-2-706.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Good faith, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-604. Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

History: En. Sec. 2-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-604.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Manner and effect of rightful rejection, 30-2-602.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Buyer, 30-2-103.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.

30-2-605. Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

History: En. Sec. 2-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-605.

Cross-References

GENERAL

Cure by seller of improper tender or delivery — replacement, 30-2-508.

Payment by buyer before inspection, 30-2-512.

What constitutes acceptance of goods, 30-2-606.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Seasonably, 30-1-204.
Seller, 30-2-103.
Writing and written, 30-1-201.

30-2-606. What constitutes acceptance of goods. (1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of 30-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

History: En. Sec. 2-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-606.

Cross-References

GENERAL

Extinction of obligation by full performance, 28-1-1101.

Extinction when directions of creditor followed, 28-1-1104.

Passing of title — reservation for security — limited application, 30-2-401.

Risk of loss in the absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Buyer's rights on improper delivery, 30-2-601.

Merchant buyer's duties as to rightfully rejected goods, 30-2-603.

Buyer's options as to salvage of rightfully rejected goods, 30-2-604.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Revocation of acceptance in whole or in part, 30-2-608.

Remedies, Title 30, ch. 2, part 7.

DEFINITIONAL

Buyer, 30-2-103.

Commercial unit, 30-2-105.

Goods, 30-2-105.

Seller, 30-2-103.

30-2-607. Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(3) Where a tender has been accepted:

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of 30-2-312).

History: En. Sec. 2-607, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-607.

Cross-References

GENERAL

Time — reasonable time — "seasonably", 30-1-204.

Performance or acceptance under reservation of rights, 30-1-207.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Revocation of acceptance in whole or in part, 30-2-608.

Deduction of damages from the price, 30-2-717.

Warranty when thing cannot be examined by buyer, 30-11-217.

DEFINITIONAL

Burden of establishing, 30-1-201.
Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Remedy, 30-1-201.
Seasonably, 30-1-204.

30-2-608. Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it:

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

History: En. Sec. 2-608, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-608.

Cross-References

GENERAL

Offer of partial performance ineffective, 28-1-1203.

When party may rescind, 28-2-1711.

Time — reasonable time — "seasonably", 30-1-204.

Buyer's rights on improper delivery, 30-2-601.

Manner and effect of rightful rejection, 30-2-602.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Remedies for fraud, 30-2-721.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Goods, 30-2-105.
Lot, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-609. Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

History: En. Sec. 2-609, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-609.

Cross-References

GENERAL

Offer to be made in good faith, 28-1-1209.

Offeror to be able and willing to perform, 28-1-1210.

Obligation of good faith, 30-1-203.

Option to accelerate at will, 30-1-208.

Retraction of anticipatory repudiation, 30-2-611.

Commercial paper, Title 30, ch. 3.

Secured transactions, sales of accounts and chattel paper, Title 30, ch. 9.

Warranty when seller knows buyer relies on his statements, 30-11-213.

DEFINITIONAL

Aggrieved party, 30-1-201.
Between merchants, 30-2-104.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Party, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Writing, 30-1-201.

30-2-610. Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (30-2-703 or 30-2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (30-2-704).

History: En. Sec. 2-610, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-610.

Cross-References

GENERAL

Effect of refusal to accept performance before offer, 28-1-1304.

When proposal may be revoked, 28-2-511.

Obligation of good faith, 30-1-203.

Right to adequate assurance of performance, 30-2-609.

"Installment contract" — breach, 30-2-612.

Remedy for improper dishonor or anticipatory repudiation, 30-5-115.

DEFINITIONAL

Aggrieved party, 30-1-201.
Contract, 30-1-201.
Party, 30-1-201.
Remedy, 30-1-201.

30-2-611. Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (30-2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History: En. Sec. 2-611, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-611.

Cross-References

GENERAL

Anticipatory repudiation, 30-2-610.

DEFINITIONAL

Aggrieved party, 30-1-201.
Cancellation, 30-2-106.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.

30-2-612. "Installment contract" — breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

History: En. Sec. 2-612, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-612.

Cross-References

GENERAL

Breach of contract, 27-1-311.

Obligation of good faith, 30-1-203.

Course of performance or practical construction, 30-2-208.

Delivery in single lot or several lots, 30-2-307.

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

Right to adequate assurance of performance, 30-2-609.

Anticipatory repudiation, 30-2-610.

Retail installment sales, Title 31, ch. 1, part 2.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Conform, 30-2-106.
Contract, 30-1-201.
Lot, 30-2-105.
Notifies, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-613. Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (30-2-324) then:

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

History: En. Sec. 2-613, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-613.

Cross-References

GENERAL

Preserving evidence of goods in dispute, 30-2-515.

Who can sue third parties for injury to goods, 30-2-722.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Fault, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-614. Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payments fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

History: En. Sec. 2-614, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-614.

Cross-References

GENERAL

Objections to tender — waiver, 28-1-1112.

Objections to mode of offer — waiver, 28-1-1212.

Modification of contracts, Title 28, ch. 2, part 16.

Letters of credit, Title 30, ch. 5.

DEFINITIONAL

Buyer, 30-2-103.
Fault, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

30-2-615. Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

History: En. Sec. 2-615, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-615.

Cross-References

GENERAL

What conditions must be performed before requiring performance by another, 28-1-406.

When delay or failure to perform or offer to perform excused, 28-1-1301.

Effect when performance prevented by other causes, 28-1-1303.

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Unconscionable contract or clause, 30-2-302.

Output, requirements, and exclusive dealings, 30-2-306.

Right to adequate assurance of performance, 30-2-609.

Casualty to identified goods, 30-2-613.

Substituted performance, 30-2-614.

Procedure on notice claiming excuse, 30-2-616.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Good faith, 30-1-201.
Merchant, 30-2-104.
Notifies, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

30-2-616. Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (30-2-612), then also as to the whole:

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

History: En. Sec. 2-616, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-616.

Cross-References

GENERAL

Modification of contracts, Title 28, ch. 2, part 16.

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

Modification, rescission, and waiver, 30-2-209.

Excuse by failure of presupposed conditions, 30-2-615.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Installment contract, 30-2-612.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.
Termination, 30-2-106.
Written, 30-1-201.

Part 7

Remedies

Part Cross-References

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

30-2-701. Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

History: En. Sec. 2-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-701.

Cross-References

GENERAL

Breach of contract, 27-1-311.

Breach of obligation other than contract, 27-1-317.

When several contracts taken together, 28-3-203.

DEFINITIONAL

Contract for sale, 30-2-106.

Remedy, 30-1-201.

30-2-702. Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (30-2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (30-2-403). Successful reclamation of goods excludes all other remedies with respect to them.

History: En. Sec. 2-702, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-702; amd. Sec. 6, Ch. 402, L. 1983.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Buyer's right to goods on seller's insolvency, 30-2-502.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.

Buyer in ordinary course of business, 30-1-201.

Contract, 30-1-201.

Good faith, 30-1-201.

Goods, 30-2-105.

Insolvent, 30-1-201.

Person, 30-1-201.

Purchaser, 30-1-201.

Receipt of goods, 30-2-103.

Remedy, 30-1-201.

Rights, 30-1-201.

Seller, 30-2-103.

Writing, 30-1-201.

30-2-703. Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract

(30-2-612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (30-2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (30-2-706);

(e) recover damages for nonacceptance (30-2-708) or in a proper case the price (30-2-709);

(f) cancel.

History: **En. Sec. 2-703, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-703.**

Cross-References

GENERAL

Availability of remedies — liability, Title 27, ch. 1.

Remedies to be liberally administered, 30-1-106.

"Letter of credit" term — "confirmed credit", 30-2-325.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.

30-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may:

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

History: **En. Sec. 2-704, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-704.**

Cross-References

GENERAL

Production of thing to be delivered, 28-1-1222.

Thing offered to be kept separate, 28-1-1223.

Seller's remedies in general, 30-2-703.

Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Aggrieved party, 30-1-201.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-705. Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (30-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History: En. Sec. 2-705, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-705.

Cross-References

GENERAL

Manner of seller's tender of delivery, 30-2-503.

Right to adequate assurance of performance, 30-2-609.

Seller's remedies in general, 30-2-703.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Goods, 30-2-105.
Insolvent, 30-1-201.
Notification, 30-1-201.
Receipt of goods, 30-2-103.
Rights, 30-1-201.
Seller, 30-2-103.

30-2-706. Seller's resale including contract for resale. (1) Under the conditions stated in 30-2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale:

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (30-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of 30-2-711).

History: En. Sec. 2-706, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-706.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Anticipatory repudiation, 30-2-610.

Seller's remedies on discovery of buyer's insolvency, 30-2-702.

Person in the position of a seller, 30-2-707.

Seller's damages for nonacceptance or repudiation, 30-2-708.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Good faith, 30-1-201, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.
Notification, 30-1-201.
Person in position of seller, 30-2-707.
Purchase, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-707. "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (30-2-705) and resell (30-2-706) and recover incidental damages (30-2-710).

History: En. Sec. 2-707, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-707.

Cross-References

GENERAL

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Rights of financing agency, 30-2-506.

Letters of credit, Title 30, ch. 5.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Consignee, 30-7-102.
Consignor, 30-7-102.
Goods, 30-2-105.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-708. Seller's damages for nonacceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (30-2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

History: En. Sec. 2-708, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-708.

Cross-References

GENERAL

Acceptance to be absolute, 28-2-504.

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.

Delivery "ex-ship", 30-2-322.

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

"No arrival, no sale" term, 30-2-324.

Manner of seller's tender of delivery, 30-2-503.

Action for price, 30-2-709.

Admissibility of market quotations, 30-2-724.

When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.

Contract, 30-1-201.

Seller, 30-2-103.

30-2-709. Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (30-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

History: En. Sec. 2-709, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-709.

Cross-References

GENERAL

Remedies to be liberally administered, 30-1-106.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Risk of loss in the absence of breach, 30-2-509.

Effect of breach on risk of loss, 30-2-510.

Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods, 30-2-704.

Seller's damages for nonacceptance or repudiation, 30-2-708.

Remedy for improper dishonor or anticipatory repudiation, 30-5-115.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

DEFINITIONAL

Action, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-710. Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

History: En. Sec. 2-710, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-710.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

30-2-711. Buyer's remedies in general — buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (30-2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this chapter (30-2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this chapter (30-2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this chapter (30-2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (30-2-706).

History: En. Sec. 2-711, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-711.

Cross-References

GENERAL

Creditor's retention of thing which he refuses to accept, 28-1-1113.
Remedies to be liberally administered, 30-1-106.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
Buyer's rights on improper delivery, 30-2-601.
Revocation of acceptance in whole or in part, 30-2-608.
Buyer's damages for breach in regard to accepted goods, 30-2-714.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Cover, 30-2-712.
Goods, 30-2-105.
Notifies, 30-1-201.

Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Security interest, 30-1-201.
Seller, 30-2-103.

30-2-712. "Cover" — buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (30-2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

History: En. Sec. 2-712, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-712.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Time — reasonable time — "seasonably", 30-1-204.

Seller's resale including contract for resale, 30-2-706.

Buyer's damages for nondelivery or repudiation, 30-2-713.

Buyer's right to specific performance or recovery of goods, 30-2-716.

Sale of perishable property for freightage, 69-11-411.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Purchase, 30-1-201.
Remedy, 30-1-201.
Seller, 30-2-103.

30-2-713. Buyer's damages for nondelivery or repudiation. (1) Subject to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (30-2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

History: En. Sec. 2-713, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-713.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Remedies to be liberally administered, 30-1-106.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Seller, 30-2-103.

30-2-714. Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of 30-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

History: En. Sec. 2-714, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-714.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Revocation of acceptance in whole or in part, 30-2-608.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

Buyer's damages for nondelivery or repudiation, 30-2-713.

Buyer's incidental and consequential damages, 30-2-715.

Deduction of damages from the price, 30-2-717.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Goods, 30-2-105.
Notification, 30-1-201.
Seller, 30-2-103.

30-2-715. Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

History: En. Sec. 2-715, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-715.

Cross-References

GENERAL

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Creditor's retention of thing which he refuses to accept, 28-1-1113.

Remedies to be liberally administered, 30-1-106.

Obligation of good faith, 30-1-203.

Third-party beneficiaries of warranties express or implied, 30-2-318.

Revocation of acceptance in whole or in part, 30-2-608.

Excuse by failure of presupposed conditions, 30-2-615.

Contractual modification or limitation of remedy, 30-2-719.

DEFINITIONAL

Cover, 30-2-712.
Goods, 30-2-105.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Seller, 30-2-103.

30-2-716. Buyer's right to specific performance or recovery of goods. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right to maintain an action for the recovery of goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

History: **En. Sec. 2-716, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-716.**

Cross-References

GENERAL

When specific performance of an obligation may be compelled, 27-1-411.

Rights of seller's creditors against sold goods, 30-2-402.

Buyer's right to goods on seller's insolvency, 30-2-502.

Action for the price, 30-2-709.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Rights, 30-1-201.

30-2-717. Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract.

History: **En. Sec. 2-717, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-717.**

Cross-References

GENERAL

Damages — when replacement value to be allowed, 27-1-306.

Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Buyer, 30-2-103.
Notifies, 30-1-201.

30-2-718. Liquidation or limitation of damages — deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the

conditions laid down in this chapter on resale by an aggrieved seller (30-2-706).

History: En. Sec. 2-718, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-718.

Cross-References

GENERAL

Limitation of damages for breach of obligation, 27-1-303.

Deposit of money offered in payment, 28-1-1225.

Unconscionable contract or clause, 30-2-302.

DEFINITIONAL

Aggrieved party, 30-1-201.
Agreement, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Notice, 30-1-201.
Party, 30-1-201.
Remedy, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

30-2-719. Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

History: En. Sec. 2-719, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-719.

Cross-References

GENERAL

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

When provision fixing liquidated damages valid, 28-2-721.

Remedies to be liberally administered, 30-1-106.

Unconscionable contract or clause, 30-2-302.

Exclusion or modification of warranties, 30-2-316.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.

30-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

History: En. Sec. 2-720, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-720.

Cross-References

GENERAL

Breach of contract, 27-1-311.

Rescission of contracts, Title 28, ch. 2, part 17.

Waiver or renunciation of claim or right after breach, 30-1-107.

DEFINITIONAL
Cancellation, 30-2-106.
Contract, 30-1-201.

30-2-721. Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

History: En. Sec. 2-721, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-721.

Cross-References

GENERAL
Kinds of fraud, 28-2-404.
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.

DEFINITIONAL
Contract for sale, 30-2-106.
Goods, 30-2-105.
Remedy, 30-1-201.

30-2-722. Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

History: En. Sec. 2-722, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-722.

Cross-References

GENERAL
Rights arising out of obligation transferable, 28-1-1001.
Casualty to identified goods, 30-2-613.

DEFINITIONAL
Action, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

30-2-723. Proof of market price — time and place. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (30-2-708 or 30-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable

substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

History: En. Sec. 2-723, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-723.

Cross-References

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Usage of trade, 30-1-205.

30-2-724. Admissibility of market quotations. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

History: En. Sec. 2-724, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-724.

Cross-References

GENERAL

Relevant evidence generally admissible, Rule 402, M.R.Ev. (see Title 26, ch. 10).

Proof of market price — time and place, 30-2-723.

DEFINITIONAL

Goods, 30-2-105.

30-2-725. Statute of limitations in contracts for sale. (1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this code becomes effective.

History: En. Sec. 2-725, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-725.

Cross-References

GENERAL

Statute of Limitations — actions based on contract or other obligation, 27-2-202.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Agreement, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Term, 30-1-201.
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CHAPTER 2A

UNIFORM COMMERCIAL CODE LEASES

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Part 1

General Provisions

30-2A-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Leases.

History: En. Sec. 7, Ch. 410, L. 1991.

30-2A-102. Scope. This chapter applies to any transaction, regardless of form, that creates a lease.

History: En. Sec. 8, Ch. 410, L. 1991.

30-2A-103. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Accessions". 30-2A-310(1).

(b) "Construction mortgage". 30-2A-309(1)(d).

(c) "Encumbrance". 30-2A-309(1)(e).

(d) "Fixtures". 30-2A-309(1)(a).
(e) "Fixture filing". 30-2A-309(1)(b).
(f) "Purchase money lease". 30-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:
(a) "Account". 30-9-106.
(b) "Between merchants". 30-2-104(3).
(c) "Buyer". 30-2-103(1)(a).
(d) "Chattel paper". 30-9-105(1)(b).
(e) "Consumer goods". 30-9-109(1).
(f) "Document". 30-9-105(1)(f).
(g) "Entrusting". 30-2-403(3).
(h) "General intangibles". 30-9-106.
(i) "Good faith". 30-2-103(1)(b).
(j) "Instrument". 30-9-105(1)(i).
(k) "Merchant". 30-2-104(1).
(l) "Mortgage". 30-9-105(1)(j).
(m) "Pursuant to commitment". 30-9-105(1)(k).
(n) "Receipt". 30-2-103(1)(c).
(o) "Sale". 30-2-106(1).
(p) "Sale on approval". 30-2-326.
(q) "Sale or return". 30-2-326.
(r) "Seller". 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 9, Ch. 410, L. 1991.

30-2A-104. Leases subject to other law. (1) A lease, although subject to this chapter, is also subject to any applicable:

(a) certificate of title statute of this state;

(b) certificate of title statute of another jurisdiction (30-2A-105); or

(c) consumer protection statute of this state or final consumer protection decision of a court of this state existing on October 1, 1991.

(2) In case of conflict between this chapter, other than 30-2A-105, 30-2A-304(3), and 30-2A-305(3), and a statute or decision referred to in subsection (1) of this section, the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

History: En. Sec. 10, Ch. 410, L. 1991.

30-2A-105. Territorial application of chapter to goods covered by certificate of title. Subject to the provisions of 30-2A-304(3) and 30-2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

(1) surrender of the certificate; or

(2) 4 months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

History: En. Sec. 11, Ch. 410, L. 1991.

30-2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

History: En. Sec. 12, Ch. 410, L. 1991.

30-2A-107. Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History: En. Sec. 13, Ch. 410, L. 1991.

30-2A-108. Unconscionability. (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) if the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney fees to the lessee;

(b) if the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney fees to the party against whom the claim is made;

(c) in determining attorney fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

History: En. Sec. 14, Ch. 410, L. 1991.

30-2A-109. Option to accelerate at will. (1) A term providing that one party or his successor in interest may accelerate payment of performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

History: En. Sec. 15, Ch. 410, L. 1991.

Part 2

Formation and Construction of Lease Contract

30-2A-201. Statute of frauds. (1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

History: **En. Sec. 16, Ch. 410, L. 1991.**

30-2A-202. Final written expression — parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) by course of dealing or usage of trade or by course of performance; and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History: **En. Sec. 17, Ch. 410, L. 1991.**

30-2A-203. Seals inoperative. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument, and the law with respect to sealed instruments does not apply to the lease contract or offer.

History: **En. Sec. 18, Ch. 410, L. 1991.**

30-2A-204. Formation in general. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties that recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

History: **En. Sec. 19, Ch. 410, L. 1991.**

30-2A-205. Firm offers. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History: **En. Sec. 20, Ch. 410, L. 1991.**

30-2A-206. Offer and acceptance in formation of lease contract. (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History: **En. Sec. 21, Ch. 410, L. 1991.**

30-2A-207. Course of performance or practical construction. (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of 30-2A-208 on modification and waiver, course of performance is relevant to show a modification or waiver of any term inconsistent with the course of performance.

History: En. Sec. 22, Ch. 410, L. 1991.

30-2A-208. Modification, rescission, and waiver. (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

History: En. Sec. 23, Ch. 410, L. 1991.

30-2A-209. Lessee under finance lease as beneficiary of supply contract. (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee provided for under subsection (1) does not:

(a) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(b) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless before the modification or rescission the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is considered to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and

warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier that arise from an agreement between the lessee and the supplier or under other law.

History: **En. Sec. 24, Ch. 410, L. 1991.**

30-2A-210. Express warranties. (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee that relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods that is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

History: **En. Sec. 25, Ch. 410, L. 1991.**

30-2A-211. Warranties against interference and against infringement — lessee's obligation against infringement. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, that will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor, who is a merchant regularly dealing in goods of the kind, a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

History: **En. Sec. 26, Ch. 410, L. 1991.**

30-2A-212. Implied warranty of merchantability. (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the description in the lease agreement;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

History: En. Sec. 27, Ch. 410, L. 1991.

30-2A-213. Implied warranty of fitness for particular purpose. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

History: En. Sec. 28, Ch. 410, L. 1991.

30-2A-214. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed whenever reasonable as consistent with each other; but, subject to the provisions of 30-2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it, the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness, the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous, and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

(3) Notwithstanding subsection (2), but subject to subsection (4):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions, such as "as is" or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (30-2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

History: En. Sec. 29, Ch. 410, L. 1991.

30-2A-215. Cumulation and conflict of warranties express or implied. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History: En. Sec. 30, Ch. 410, L. 1991.

30-2A-216. Third-party beneficiaries of express and implied warranties. A warranty to or for the benefit of a lessee under this chapter, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

History: En. Sec. 31, Ch. 410, L. 1991.

30-2A-217. Identification. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(1) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(2) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(3) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

History: En. Sec. 32, Ch. 410, L. 1991.

30-2A-218. Insurance and proceeds. (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

History: En. Sec. 33, Ch. 410, L. 1991.

30-2A-219. Risk of loss. (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this chapter on the effect of default on risk of loss (30-2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier, but if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2)(a) or (2)(b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor or, in the case of a finance lease, the supplier is a merchant; otherwise the risk passes to the lessee on tender of delivery.

History: En. Sec. 34, Ch. 410, L. 1991.

30-2A-220. Effect of default on risk of loss. (1) When risk of loss is to pass to the lessee and the time of passage is not stated:

(a) if a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor or, in the case of a finance lease, the supplier until cure or acceptance.

(b) if the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time.

History: En. Sec. 35, Ch. 410, L. 1991.

30-2A-221. Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery or if the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or 30-2A-219, then:

(1) if the loss is total, the lease contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

History: **En. Sec. 36, Ch. 410, L. 1991.**

Part 3

Effect of Lease Contract

30-2A-301. Enforceability of lease contract. Except as otherwise provided in this chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods, and against creditors of the parties.

History: **En. Sec. 37, Ch. 410, L. 1991.**

30-2A-302. Title to and possession of goods. Except as otherwise provided in this chapter, each provision of this chapter applies whether the lessor or a third party has title to the goods and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

History: **En. Sec. 38, Ch. 410, L. 1991.**

30-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Title 30, chapter 9, secured transactions, by reason of 30-9-102(1)(b).

(2) Except as provided in subsections (3) and (4), a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods or that makes such a transfer an event of default gives rise to the rights and remedies provided in subsection (5), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) (a) A provision in a lease agreement that prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods or that makes such a transfer an event of default is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision.

(b) Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation or that makes such a transfer an event of default is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract within the purview of subsection (5).

(5) Subject to subsections (3) and (4):

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in 30-2A-501;

(b) if subsection (5)(a) is not applicable and if a transfer is made that is prohibited under a lease agreement or that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract:

(i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer; and

(ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

History: En. Sec. 39, Ch. 410, L. 1991.

30-2A-304. Subsequent lease of goods by lessor. (1) Subject to 30-2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer and, except as provided in 30-2A-527(4) and subsection (2) of this section, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) the lessor's transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check that is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

History: En. Sec. 40, Ch. 410, L. 1991.

30-2A-305. Sale or sublease of goods by lessee. (1) Subject to the provisions of 30-2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer and, except as provided in 30-2A-511(4) and subsection (2) of this section, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease, the lessee has that power even though:

(a) the lessor was deceived as to the identity of the lessee;

(b) the delivery was in exchange for a check that is later dishonored; or

(c) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

History: En. Sec. 41, Ch. 410, L. 1991.

30-2A-306. Priority of certain liens arising by operation of law. If a person in the ordinary course of business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

History: En. Sec. 42, Ch. 410, L. 1991.

30-2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods. (1) Except as otherwise provided in 30-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in 30-2A-306, 30-2A-308, and subsections (3) and (4) of this section, a creditor of a lessor takes subject to the lease contract unless:

(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods that was perfected (30-9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (30-9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever occurs first, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

History: En. Sec. 43, Ch. 410, L. 1991.

30-2A-308. Special rights of creditors. (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract:

(a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like; and

(b) is made under circumstances that under any statute or rule of law apart from this chapter would constitute the transaction as a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

History: En. Sec. 44, Ch. 410, L. 1991.

30-2A-309. Lessor's and lessee's rights when goods become fixtures. (1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9-402(5);

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter, a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding the provisions of subsection (4)(a) but otherwise subject to the provisions of subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the provisions of subsections (1) through (6), priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter or if necessary to enforce other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate. However, the lessor or lessee shall reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (Title 30, chapter 9).

History: En. Sec. 45, Ch. 410, L. 1991.

30-2A-310. Lessor's and lessee's rights when goods become accessions. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of:

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) and (4) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter or if necessary to enforce his other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

History: En. Sec. 46, Ch. 410, L. 1991.

30-2A-311. Priority subject to subordination. Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

History: En. Sec. 47, Ch. 410, L. 1991.

Part 4

Performance of Lease Contract Repudiated, Substituted, and Excused

30-2A-401. Insecurity — adequate assurance of performance. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which he has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided

to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

History: En. Sec. 48, Ch. 410, L. 1991.

30-2A-402. Anticipatory repudiation. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) make demand pursuant to 30-2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(3) resort to any right or remedy upon default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (30-2A-524).

History: En. Sec. 49, Ch. 410, L. 1991.

30-2A-403. Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under 30-2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History: En. Sec. 50, Ch. 410, L. 1991.

30-2A-404. Substituted performance. (1) If without fault of the lessee, the lessor, and the supplier the agreed berthing, loading, or unloading facilities fail, the agreed type of carrier becomes unavailable, or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent and if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

History: En. Sec. 51, Ch. 410, L. 1991.

30-2A-405. Excused performance. Subject to 30-2A-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in subsection (1) affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and, in the case of a finance lease, the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (2), of the estimated quota thus made available for the lessee.

History: En. Sec. 52, Ch. 410, L. 1991.

30-2A-406. Procedure on excused performance. (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under 30-2A-405, the lessee may by written notification to the lessor as to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510):

(a) terminate the lease contract (30-2A-505(2)); or

(b) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under 30-2A-402, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

History: En. Sec. 53, Ch. 410, L. 1991.

30-2A-407. Irrevocable promises — finance leases. (1) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

(a) is effective and enforceable between the parties and by or against third parties, including assignees of the parties; and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

History: En. Sec. 54, Ch. 410, L. 1991.

Part 5

Default

30-2A-501. Default — procedure. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.

(4) Except as otherwise provided in 30-1-106(1), this chapter, or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

History: En. Sec. 55, Ch. 410, L. 1991.

30-2A-502. Notice after default. Except as otherwise provided in this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

History: En. Sec. 56, Ch. 410, L. 1991.

30-2A-503. Modification or impairment of rights and remedies. (1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

(2) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.

(3) Consequential damages may be liquidated under 30-2A-504 or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable, but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

History: En. Sec. 57, Ch. 410, L. 1991.

30-2A-504. Liquidation of damages. (1) Damages payable by either party for default or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to a lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages and such provision does not comply with subsection (1) or if such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (30-2A-525 or 30-2A-526), the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20% of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term or, in the case of a consumer lease, the lesser of such amount or $500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1) of this section; and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

History: En. Sec. 58, Ch. 410, L. 1991.

30-2A-505. Cancellation and termination — effect of cancellation, termination, rescission, or fraud on rights and remedies. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation", "rescission", or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be considered inconsistent with a claim for damages or other right or remedy.

History: En. Sec. 59, Ch. 410, L. 1991.

30-2A-506. Statute of limitations. (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. By the original lease contract, the parties may reduce the period of limitation to not less than 1 year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations, nor does it apply to causes of action that have accrued before this chapter becomes effective.

History: En. Sec. 60, Ch. 410, L. 1991.

30-2A-507. Proof of market rent — time and place. (1) Damages based on market rent (30-2A-519 or 30-2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

History: En. Sec. 61, Ch. 410, L. 1991.

30-2A-508. Lessee's remedies. (1) If a lessor fails to deliver the goods in conformity to the lease contract (30-2A-509) or repudiates the lease contract (30-2A-402) or if a lessee rightfully rejects the goods (30-2A-509) or justifiably revokes acceptance of the goods (30-2A-517), then with respect to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510), the lessor is in default under the lease contract and the lessee may:

(a) cancel the lease contract (30-2A-505(1));

(b) recover so much of the rent and security as has been paid and is just under the circumstances;

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (30-2A-518 and 30-2A-520) or recover damages for nondelivery (30-2A-519 and 30-2A-520);

(d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) if the goods have been identified, recover them (30-2A-522); or

(b) in a proper case, obtain specific performance or replevy the goods (30-2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in 30-2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (30-2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to 30-2A-527(5).

(6) Subject to the provisions of 30-2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

History: En. Sec. 62, Ch. 410, L. 1991.

30-2A-509. Lessee's rights on improper delivery — rightful rejection. (1) Subject to the provisions of 30-2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

History: En. Sec. 63, Ch. 410, L. 1991.

30-2A-510. Installment lease contracts — rejection and default. (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole, there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

History: En. Sec. 64, Ch. 410, L. 1991.

30-2A-511. Merchant lessee's duties as to rightfully rejected goods. (1) Subject to any security interest of a lessee (30-2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1) of this section) or any other lessee (30-2A-512) disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(3) In complying with 30-2A-512 or this section, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to 30-2A-512 or this section takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

History: En. Sec. 65, Ch. 410, L. 1991.

30-2A-512. Lessee's duties as to rightfully rejected goods. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (30-2A-511) and subject to any security interest of a lessee (30-2A-508(5)):

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account, ship them to the lessor or the supplier, or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in 30-2A-511; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

History: En. Sec. 66, Ch. 410, L. 1991.

30-2A-513. Cure by lessor of improper tender or delivery — replacement. (1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

History: En. Sec. 67, Ch. 410, L. 1991.

30-2A-514. Waiver of lessee's objections. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (30-2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

History: En. Sec. 68, Ch. 410, L. 1991.

30-2A-515. Acceptance of goods. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods (30-2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

History: En. Sec. 69, Ch. 410, L. 1991.

30-2A-516. Effect of acceptance of goods — notice of default — burden of establishing default after acceptance — notice of claim or litigation to person answerable over. (1) A lessee shall pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance may not be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance may not be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (30-2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend, that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation, including settlement if the claim is one for infringement or the like (30-2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control, the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (30-2A-211).

History: En. Sec. 70, Ch. 410, L. 1991.

30-2A-517. Revocation of acceptance of goods. (1) A lessee may revoke acceptance of a lot or commercial unit the nonconformity of which substantially impairs its value to the lessee if the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods that is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

History: En. Sec. 71, Ch. 410, L. 1991.

30-2A-518. Cover — substitute goods. (1) After a default by a lessor under the lease contract of the type described in 30-2A-508(1) or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and 30-2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and 30-2A-519 governs.

History: En. Sec. 72, Ch. 410, L. 1991.

30-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and 30-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under 30-2A-518(2) or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (30-2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

History: En. Sec. 73, Ch. 410, L. 1991.

30-2A-520. Lessee's incidental and consequential damages. (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked; any commercially reasonable charges; expenses or commissions in connection with effecting cover; and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and that could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

History: En. Sec. 74, Ch. 410, L. 1991.

30-2A-521. Lessee's right to specific performance or replevin. (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court considers just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable

effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

History: En. Sec. 75, Ch. 410, L. 1991.

30-2A-522. Lessee's right to goods on lessor's insolvency. (1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (30-2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

History: En. Sec. 76, Ch. 410, L. 1991.

30-2A-523. Lessor's remedies. (1) If a lessee wrongfully rejects or revokes acceptance of goods, fails to make a payment when due, or repudiates with respect to a part or the whole, then with respect to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510), the lessee is in default under the lease contract and the lessor may:

(a) cancel the lease contract (30-2A-505(1));

(b) proceed respecting goods not identified to the lease contract (30-2A-524);

(c) withhold delivery of the goods and take possession of goods previously delivered (30-2A-525);

(d) stop delivery of the goods by any bailee (30-2A-526);

(e) dispose of the goods and recover damages (30-2A-527), retain the goods and recover damages (30-2A-528), or in a proper case, recover rent (30-2A-529);

(f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2); or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

History: En. Sec. 77, Ch. 410, L. 1991.

30-2A-524. Lessor's right to identify goods to lease contract. (1) If a lessee under a lease contract defaults as described in 30-2A-523 or, if agreed, after other default by the lessee, a lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods (30-2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

History: En. Sec. 78, Ch. 410, L. 1991.

30-2A-525. Lessor's right to possession of goods. (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor that is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business and may dispose of goods on the lessee's premises (30-2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

History: En. Sec. 79, Ch. 410, L. 1991.

30-2A-526. Lessor's stoppage of delivery in transit or otherwise. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History: En. Sec. 80, Ch. 410, L. 1991.

30-2A-527. Lessor's rights to dispose of goods. (1) After a default by a lessee under the lease contract described in 30-2A-523(1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (30-2A-525 or 30-2A-526) or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and 30-2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and 30-2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (30-2A-508(5)).

History: En. Sec. 81, Ch. 410, L. 1991.

30-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-1-102(3) and 30-2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under 30-2A-527(2) or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in 30-2A-523(1) or (3)(a) or, if agreed, for other default of the lessee:

(a) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(b) the present value as of the date determined under subsection (1)(a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located, computed for the same lease term; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, that the lessor would have made from full performance by the lessee, together with any incidental damages allowed under 30-2A-530, allowance due for costs reasonably incurred, and credit due for payments or proceeds of disposition.

History: En. Sec. 82, Ch. 410, L. 1991.

30-2A-529. Lessor's action for rent. (1) After default by the lessee under the lease contract of the type described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (30-2A-219):

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition

is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by 30-2A-527 or 30-2A-528 and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to 30-2A-527 or 30-2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) If a lessee under a lease contract defaults as described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under 30-2A-527 or 30-2A-528.

History: En. Sec. 83, Ch. 410, L. 1991.

30-2A-530. Lessor's incidental damages. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery; in the transportation, care, and custody of goods after the lessee's default; in connection with return or disposition of the goods; or otherwise resulting from the default.

History: En. Sec. 84, Ch. 410, L. 1991.

30-2A-531. Standing to sue third parties for injury to goods. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(a) the lessor has a right of action against the third party; and

(b) the lessee also has a right of action against the third party if the lessee:

(i) has a security interest in the goods;

(ii) has an insurable interest in the goods; or

(iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

History: En. Sec. 85, Ch. 410, L. 1991.

30-2A-532. Lessor's rights to residual interest. In addition to any other recovery permitted by this chapter or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

History: En. Sec. 86, Ch. 410, L. 1991.

CHAPTER 3

UNIFORM COMMERCIAL CODE
COMMERCIAL PAPER

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30-3-413. Obligation of maker.
30-3-414. Obligation of indorser.
30-3-415. Instruments signed for accommodation.
30-3-416. Repealed.
30-3-417. Transfer warranties.
30-3-418. Repealed.
30-3-419. Conversion of instrument.
30-3-420. Employer responsibility for fraudulent indorsement by employee.
30-3-421. Refusal to pay cashier's checks, teller's checks, and certified checks.
30-3-422. Obligation of acceptor.
30-3-423. Obligation of drawer.
30-3-424. Presentment warranties.
30-3-425. Payment or acceptance by mistake.

Part 5 — Presentment, Notice of Dishonor, and Protest

30-3-501. Repealed.
30-3-502. Repealed.
30-3-503. Repealed.
30-3-504. Presentment.
30-3-505. Repealed.
30-3-506. Repealed.
30-3-507. Repealed.
30-3-508. Notice of dishonor.
30-3-509. Repealed.
30-3-510. Evidence of dishonor.
30-3-511. Repealed.
30-3-512. Dishonor.
30-3-513. Excused presentment and notice of dishonor.

Part 6 — Discharge

30-3-601. Discharge and effect of discharge.
30-3-602. Repealed.
30-3-603. Payment.
30-3-604. Tender of payment.
30-3-605. Discharge by cancellation or renunciation.
30-3-606. Repealed.
30-3-607. Discharge of indorsers and accommodation parties.

Part 7 — Advice of International Sight Draft
(Repealed. Sec. 230, Ch. 410, L. 1991)

Part 8 — Miscellaneous
(Repealed. Sec. 230, Ch. 410, L. 1991)

Chapter Cross-References

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

State-sponsored credit cards, Title 31, ch. 1, part 6.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

Part 1

Short Title, Form, and Interpretation

30-3-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Negotiable Instruments.

History: En. Sec. 3-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-101; amd. Sec. 87, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: At end substituted "Negotiable Instruments" for "Commercial Paper".

30-3-102. Definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Acceptor" means a drawee that has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person that signs a draft as a person ordering payment.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(e) "Maker" means a person that signs a note as promisor of payment.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which that person is located, with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(h) "Party" means party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (30-1-201(8)).

(k) "Remitter" means a person that purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-3-410.
"Accommodated party". 30-3-415.
"Accommodation party". 30-3-415.
"Alteration". 30-3-407.
"Anomalous indorsement". 30-3-204.
"Blank indorsement". 30-3-204.
"Cashier's check". 30-3-104.
"Certificate of deposit". 30-3-104.
"Certified check". 30-3-410.
"Check". 30-3-104.
"Consideration". 30-3-303.
"Draft". 30-3-104.
"Fiduciary". 30-3-308.
"Holder in due course". 30-3-302.
"Incomplete instrument". 30-3-115.
"Indorsement". 30-3-203.
"Indorser". 30-3-203.
"Instrument". 30-3-104.
"Issue". 30-3-125.
"Issuer". 30-3-125.
"Negotiable instrument". 30-3-104.
"Negotiation". 30-3-202.
"Note". 30-3-104.
"Payable at a definite time". 30-3-109.
"Payable on demand". 30-3-108.
"Payable to bearer". 30-3-111.
"Payable to order". 30-3-111.
"Payment". 30-3-603.
"Person entitled to enforce". 30-3-301.
"Presentment". 30-3-504.
"Reacquisition". 30-3-208.
"Represented person". 30-3-308.
"Special indorsement". 30-3-204.
"Teller's check". 30-3-104.
"Transfer of instrument". 30-3-210.
"Traveler's check". 30-3-104.
"Value". 30-3-303.

(3) The following definitions in other chapters apply to this chapter:

"Bank". 30-4-105.
"Banking day". 30-4-104.
"Clearinghouse". 30-4-104.
"Collecting bank". 30-4-105.
"Customer". 30-4-104.
"Depositary bank". 30-4-105.
"Documentary draft". 30-4-104.
"Intermediary bank". 30-4-105.
"Item". 30-4-104.
"Payor bank". 30-4-105.
"Suspends payments". 30-4-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 3-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-102; amd. Sec. 89, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (1) inserted definitions of acceptor, drawee, drawer, good faith, maker, ordinary care, party, prove, and remitter; deleted definition of issue that read: ""Issue" means the first delivery of an instrument to a holder or a remitter"; deleted definition of secondary party that read: ""Secondary party" means a drawer or endorser"; deleted definition of instrument that read: ""Instrument" means a negotiable instrument"; substituted definition of order for former definition that read: "An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession"; substituted definition of promise for former definition that read: "A "promise" is an undertaking to pay and must be more than an acknowledgement of an obligation"; in (2) inserted references to accommodated party, anomalous indorsement, blank indorsement, cashier's check, certified check, consideration, fiduciary, incomplete instrument, indorsement, indorser, instrument, issue, issuer, negotiable instrument, payable at a definite time, payable on demand, payable to bearer, payable to order, payment, person entitled to enforce, reacquisition, represented person, special indorsement, teller's check, transfer of instrument, traveler's check, and value and deleted ""Certification". 30-3-411", ""Definite time". 30-3-109", ""Dishonor". 30-3-507", ""Notice of dishonor". 30-3-508", ""On demand". 30-3-108", ""Protest". 30-3-509", ""Restrictive endorsement". 30-3-205", and ""Signature". 30-3-401"; in (3) inserted references to bank and suspends payments and deleted ""Account". 30-4-104" and ""Midnight deadline". 30-4-104"; and made minor changes in style.

Cross-References

GENERAL

How presentment made, 30-3-504.

DEFINITIONAL

Bank, 30-1-201.
Delivery, 30-1-201.
Holder, 30-1-201.
Money, 30-1-201.
Person, 30-1-201.

30-3-103. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-103.

30-3-104. Negotiable instrument. (1) "Negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(b) is payable on demand or at a definite time; and

(c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money except that the promise or order may contain:

(i) an undertaking or power to give, maintain, or protect collateral to secure payment;

(ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or

(iii) a waiver of the benefit of any law intended for the advantage or protection of any obligor.

(2) "Instrument" means a negotiable instrument.

(3) An order that meets all of the requirements of subsection (1) except subsection (1)(a) and otherwise falls within the definition of "check" in subsection (6) is a negotiable instrument and a check.

(4) Notwithstanding the provisions of subsection (1), a promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, indicating that the writing is not an instrument governed by this chapter.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both note and draft, the person entitled to enforce the instrument may treat it as either.

(6) (a) "Check" means:

(i) a draft, other than a documentary draft, payable on demand and drawn on a bank; or

(ii) a cashier's check or teller's check.

(b) An instrument may be a check even though it is described on its face by another term, such as "money order".

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank:

(a) on another bank; or

(b) payable at or through a bank.

(9) "Traveler's check" means an instrument that:

(a) is payable on demand;

(b) is drawn on or payable at or through a bank;

(c) is designated by the term traveler's check or by a substantially similar term; and

(d) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

History: En. Sec. 3-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-104; amd. Sec. 90, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note". (1) Any writing to be a negotiable instrument within this chapter must:

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is:

(a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other chapters of this code, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this chapter as well as to instruments which are so negotiable."

Cross-References

GENERAL

Payment of taxes by negotiable instrument, 15-1-421.

When promise or order unconditional, 30-3-105.

Money, 30-3-107.

Payable on demand, 30-3-108.

Definite time, 30-3-109.

Payable to bearer, 30-3-111.

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

DEFINITIONAL

Bank, 30-1-201.

Bearer, 30-1-201.

Definite time, 30-3-109.

Money, 30-1-201.

On demand, 30-3-108.

Order, 30-3-102.

Promise, 30-3-102.

Signed, 30-1-201.

Term, 30-1-201.

Writing, 30-1-201.

30-3-105. Unconditional promise or order. (1) (a) Except as provided in subsections (2) and (3), for the purposes of 30-3-104(1), a promise or order is unconditional unless it states:

(i) an express condition to payment; or

(ii) that the promise or order is subject to or governed by another writing or that the rights or obligations with respect to the promise or order are stated in another writing.

(b) A mere reference to another writing does not make the promise or order conditional.

(2) A promise or order is not made conditional:

(a) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration; or

(b) because payment is limited to or resorts to a particular fund or source.

(3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of 30-3-104(1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of 30-3-104(1), but there cannot be a holder in due course of the promise or order.

History: En. Sec. 3-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-105; amd. Sec. 92, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "When promise or order unconditional. (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument:

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section."

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Order, 30-3-102.
Promise, 30-3-102.

30-3-106. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-106.

30-3-107. Instrument payable in foreign money. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

History: En. Sec. 3-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-107; amd. Sec. 93, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Money. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency."

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — note, 30-3-104.

Right of charge-back or refund, 30-4-212.

DEFINITIONAL

Instrument, 30-3-102.
Money, 30-1-201.
Order, 30-3-102.
Promise, 30-3-102.
Purchase, 30-1-201.

30-3-108. Payable on demand. A promise or order is "payable on demand" if:

(1) it states that it is payable on demand or at sight or otherwise indicates that it is payable at the will of the holder; or

(2) it does not state any time of payment.

History: En. Sec. 3-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-108; amd. Sec. 94, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated."

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Holder in due course, 30-3-302.

DEFINITIONAL

Instrument, 30-3-102.

30-3-109. Definite time. (1) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to the rights of:

(a) prepayment;

(b) acceleration;

(c) extension at the option of the holder; or

(d) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

History: En. Sec. 3-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-109; amd. Sec. 95, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) An instrument is payable at a definite time if by its terms it is payable:

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred."

Cross-References

GENERAL

Option to accelerate at will, 30-1-208.

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Incomplete instruments, 30-3-115.

Notice to purchaser, 30-3-304.

DEFINITIONAL

Holder, 30-1-201.

Instrument, 30-3-102.

Term, 30-1-201.

30-3-110. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-110.

30-3-111. Payable to bearer or to order. (1) A promise or order is "payable to bearer" if it:

(a) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(b) does not state a payee; or

(c) states that it is payable to or to the order of "cash" or otherwise indicates that it is not payable to an identified person.

(2) A promise or order that is not payable to bearer is "payable to order" if it is payable to the order of an identified person or to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed as stated in 30-3-204(1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank as stated in 30-3-204(2).

History: En. Sec. 3-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-111; amd. Sec. 96, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Payable to bearer. An instrument is payable to bearer when by its terms it is payable to:

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee."

Cross-References

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

Incomplete instruments, 30-3-115.

Special endorsement — blank endorsement, 30-3-204.

Impostors — signature in name of payee, 30-3-405.

DEFINITIONAL

Bearer, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Term, 30-1-201.

30-3-112. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-112.

30-3-113. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-113.

30-3-114. Date of instrument. (1) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in 30-4-401(3), an instrument payable on demand is not payable before the date of the instrument.

(2) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

History: En. Sec. 3-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-114; amd. Sec. 100, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Date, antedating, postdating. (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct."

Cross-References

GENERAL

Definite time, 30-3-109.

Incomplete instruments, 30-3-115.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Instrument, 30-3-102.

Issue, 30-3-102.

On demand, 30-3-108.

Presumed, 30-1-201.

Signature, 30-3-401.

30-3-115. Incomplete instrument. (1) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(2) Subject to subsection (3), if an incomplete instrument is an instrument under 30-3-104, it may be enforced according to its terms if it is not completed or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under 30-3-104 but, after completion, the requirements of 30-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(3) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument governed by 30-3-407.

(4) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

History: En. Sec. 3-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-115; amd. Sec. 102, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Incomplete instruments. (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (30-3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting."

Cross-References

GENERAL

Payment on demand, 30-3-108.

Date, antedating, postdating, 30-3-114.

Rights of a holder in due course, 30-3-305.

Signature, 30-3-401.

Contract of maker, drawer, and acceptor, 30-3-413.

DEFINITIONAL

Alteration, 30-3-407.

Burden of establishing, 30-1-201.

Delivery, 30-1-201.

Instrument, 30-3-102.

Party, 30-1-201.

Signed, 30-1-201.

30-3-116. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-116.

30-3-117. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 3-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-117.

30-3-118. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 3-118, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-118.

30-3-119. Other agreements affecting instrument. Subject to applicable law regarding exclusion of proof of contemporaneous or prior agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

History: En. Sec. 3-119, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-119; amd. Sec. 104, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Other writings affecting instrument. (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument."

Cross-References

GENERAL

When promise or order unconditional, 30-3-105.

Notice to purchaser, 30-3-304.

DEFINITIONAL

Agreement, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Notice, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Written and writing, 30-1-201.

30-3-120. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 3-120, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-120.

30-3-121. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 3-121, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-121.

30-3-122. Statute of limitations. (1) Except as provided in subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the payment date or dates stated in the note or, if a payment date is accelerated, within 6 years after the accelerated payment date.

(2) Except as provided in subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(3) Except as provided in subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within

6 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 6 years after demand for payment is made to the acceptor or issuer, as the case may be.

(5) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a maturity date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the maturity date has passed.

(6) This subsection applies to an action to enforce the obligation of a party to pay an accepted draft, other than a certified check. If the obligation of the acceptor is payable at a definite time, the action must be commenced within 6 years after the payment date or dates stated in the draft or acceptance. If the obligation of the acceptor is payable on demand, the action must be commenced within 6 years after the date of the acceptance.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action for conversion of an instrument, for money had and received, or for like action based on conversion; for breach of warranty; or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within 3 years after the cause of action accrues.

History: En. Sec. 3-122, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-122; amd. Sec. 105, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Accrual of cause of action. (1) A cause of action against a maker or an acceptor accrues:

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action."

Cross-References

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.

Contract of endorser — order of liability, 30-3-414.

DEFINITIONAL

Action, 30-1-201.
Certificate of deposit, 30-3-102.
Draft, 30-3-104.
Instrument, 30-3-102.
Note, 30-3-104.
Notice of dishonor, 30-3-508.
On demand, 30-3-108.

30-3-123. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 593, C. Civ. Proc. 1895; re-en. Sec. 6500, Rev. C. 1907; re-en. Sec. 9092, R.C.M. 1921; re-en. Sec. 9092, R.C.M. 1935; amd. Sec. 18, Ch. 265, L. 1977; R.C.M. 1947, 93-2830.

30-3-124. Subject matter. (1) This chapter applies to negotiable instruments. It does not apply to money or to payment orders governed by chapter 4A. A negotiable instrument that is also a certificated security under 30-8-102(1)(a) is subject to chapter 8 and to this chapter.

(2) In the event of conflict between the provisions of this chapter and those of chapter 4, chapter 8, or chapter 9, the provisions of chapter 4, chapter 8, and chapter 9 prevail over those of this chapter.

(3) Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

History: En. Sec. 88, Ch. 410, L. 1991.

30-3-125. Issue of instrument. (1) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(2) An unissued instrument or an unissued incomplete instrument (30-3-115) that is completed is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(3) "Issuer" applies to issued and unissued instruments and means any person that signs an instrument as maker or drawer.

History: En. Sec. 91, Ch. 410, L. 1991.

30-3-126. Identification of person to whom instrument is payable. (1) A person to whom an instrument is payable is determined by the intent of the person, whether or not authorized, signing as, in the name of, or on behalf of the maker or drawer. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or on behalf of the maker or drawer and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(2) If the signature of the maker or drawer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(b) If an instrument is payable to:

(i) a trust, estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable either to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(4) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

History: En. Sec. 97, Ch. 410, L. 1991.

30-3-127. Place of payment. Except as otherwise provided for items in chapter 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

History: En. Sec. 98, Ch. 410, L. 1991.

30-3-128. Interest. (1) Unless otherwise provided in the instrument, an instrument is not payable with interest and interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money, or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

History: En. Sec. 99, Ch. 410, L. 1991.

30-3-129. Contradictory terms of instrument. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

History: En. Sec. 101, Ch. 410, L. 1991.

30-3-130. Joint and several liability — contribution. (1) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who are indorsing joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in 30-3-424(5) or by agreement of the affected parties, a party with joint and several liability that pays the instrument is entitled to receive from any party with the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one party with joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (2) of a party with the same joint and several liability to receive contribution from the party discharged.

History: En. Sec. 103, Ch. 410, L. 1991.

30-3-131. Notice of right to defend action. In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or chapter 4, the defendant may give the third person written notice of the litigation and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

History: En. Sec. 106, Ch. 410, L. 1991.

Part 2

Transfer and Negotiation

30-3-201. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-201.

30-3-202. Negotiation. (1) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument to a person who thereby becomes its holder if possession is obtained from a person other than the issuer of the instrument.

(2) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

History: En. Sec. 3-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-202; amd. Sec. 107, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Negotiation. (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary endorsement; if payable to bearer it is negotiated by delivery.

(2) An endorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An endorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an endorsement do not affect its character as an endorsement."

Cross-References

GENERAL

Endorsement, presumption as to time, 26-1-602.

Special endorsement — blank endorsement, 30-3-204.

Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Written, 30-1-201.

30-3-203. Indorsement. (1) "Indorsement" means a signature, other than that of a maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, the terms of the instrument, the place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(2) "Indorser" means a person who makes an indorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(4) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name, or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

History: En. Sec. 3-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-203; amd. Sec. 110, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Wrong or misspelled name. Where an instrument is made payable to a person under a misspelled name or one other than his own he may endorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument."

Cross-References

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

30-3-204. Special indorsement — blank indorsement — anomalous indorsement. (1) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement". When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in 30-3-126 apply to special indorsements.

(2) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement". When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(3) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(4) "Anomalous indorsement" means an indorsement made by a person that is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

History: En. Sec. 3-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-204; amd. Sec. 111, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Special endorsement — blank endorsement. (1) A special endorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially endorsed becomes payable to the order of the special endorsee and may be further negotiated only by his endorsement.

(2) An endorsement in blank specifies no particular endorsee and may consist of a mere signature. An instrument payable to order and endorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially endorsed.

(3) The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser in blank any contract consistent with the character of the endorsement."

Cross-References

GENERAL

Negotiation, 30-3-202.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

30-3-205. Restrictive indorsement. (1) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(3) The following rules apply to an instrument bearing an indorsement, described in 30-4-201(2), or in blank or to a particular bank using the words "for collection", "for deposit", or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account:

(a) A person, other than a bank, that purchases the instrument when so indorsed converts the instrument unless the proceeds of the instrument are received by the indorser or are applied consistently with the indorsement.

(b) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in subsection (3)(c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(4) Except for an indorsement covered by subsection (3), the following rules apply to an instrument bearing an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person:

(a) Unless there is notice of breach of fiduciary duty as provided in 30-3-308, a person that purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A later transferee of the instrument or person that pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) Purchase of an instrument bearing an indorsement to which this section applies does not prevent the purchaser from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (3).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

History: En. Sec. 3-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-205; amd. Sec. 112, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Restrictive endorsements. An endorsement is restrictive which either:

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the endorser or of another person."

Cross-References

GENERAL

Payment of taxes by negotiable instrument, 15-1-421.

Negotiation, 30-3-202.

Restrictive endorsements, 30-3-205.

Notice to purchaser, 30-3-304.

Conversion of instrument — innocent representative, 30-3-419.

Payment or satisfaction, 30-3-603.

Effect of instructions, 30-4-203.

Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Instrument, 30-3-102.

Person, 30-1-201.

30-3-206. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-206.

30-3-207. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-207.

30-3-208. Reacquisition. Reacquisition of an instrument occurs if it is transferred, by negotiation or otherwise, to a former holder. A former holder that reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any late holder.

History: En. Sec. 3-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-208; amd. Sec. 113, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Where an instrument is returned to or reacquired by a prior party he may cancel any endorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his endorsement has been canceled is discharged as against subsequent holders in due course as well."

Cross-References

GENERAL

Payment or satisfaction, 30-3-603.
Cancellation and renunciation, 30-3-605.

DEFINITIONAL

Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.

30-3-209. Negotiation subject to rescission. (1) Negotiation is effective even if obtained:

(a) from an infant, a corporation exceeding its powers, or a person without capacity; or

(b) by fraud, duress, or mistake or in breach of duty or as part of an illegal transaction.

(2) To the extent permitted by law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

History: En. Sec. 108, Ch. 410, L. 1991.

30-3-210. Rights acquired by transfer. (1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, regardless of whether the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee may not acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the purchaser engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(4) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

History: En. Sec. 109, Ch. 410, L. 1991.

Part 3

Rights of a Holder

30-3-301. Person entitled to enforce instrument. "Person entitled to enforce" an instrument means the holder of an instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to 30-3-309. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

History: En. Sec. 3-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-301; amd. Sec. 114, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Rights of a holder. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in 30-3-603 on payment or satisfaction, discharge it or enforce payment in his own name."

Cross-References

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Holder, 30-1-201.

Instrument, 30-3-102.

Rights, 30-1-201.

30-3-302. Holder in due course. (1) Subject to subsection (3) and 30-3-105(4), "holder in due course" means the holder of an instrument if:

(a) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) the holder took the instrument:

(i) for value;

(ii) in good faith;

(iii) without notice that it is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;

(iv) without notice that the instrument contains an unauthorized signature or has been altered;

(v) without notice of any claim to the instrument stated in 30-3-306; and

(vi) without notice that any party to the instrument has any defense or claim in recoupment stated in 30-3-305(1).

(2) Notice of discharge of a party to the instrument, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (1), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(3) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:

(a) by legal process or by purchase at at an execution, bankruptcy, or creditor's sale or similar proceeding;

(b) by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or

(c) as the successor in interest to an estate or other organization.

(4) If, under 30-3-303(1)(a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(5) If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument that, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(6) To be effective, notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

History: En. Sec. 3-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-302; amd. Sec. 115, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) A holder in due course is a holder who takes the instrument:

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased."

Cross-References

GENERAL

Taking for value, 30-3-303.
Notice to purchaser, 30-3-304.
Rights of a holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.

DEFINITIONAL

Good faith, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice, 30-1-201.
Notice of dishonor, 30-3-508.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Value, 30-3-303.

30-3-303. Value and consideration. (1) An instrument is issued or transferred for value if:

(a) the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed;

(b) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceedings;

(c) the instrument is issued or transferred as payment of, or as security for, an an existing obligation of any person, whether or not the obligation is due;

(d) the instrument is issued or transferred in exchange for a negotiable instrument; or

(e) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the drawer or maker has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (1), the instrument is also issued for consideration.

History: En. Sec. 3-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-303; amd. Sec. 116, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Taking for value. A holder takes the instrument for value:

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person."

Cross-References

GENERAL

Holder in due course, 30-3-302.

Contract of accommodation party, 30-3-415.

Warranties on presentment and transfer, 30-3-417.

When bank gives value for purposes of holder in due course, 30-4-209.

DEFINITIONAL

Holder, 30-1-201.

Instrument, 30-3-102.

Person, 30-1-201.

Security interest, 30-1-201.

30-3-304. Overdue instrument. (1) An instrument payable on demand becomes overdue at the earliest of the following times:

(a) on the day after the day demand for payment is duly made;

(b) if the instrument is a check, 90 days after its date; or

(c) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date that is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and trade usage.

(2) With respect to an instrument payable at a definite time, the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is a default in payment of interest but no default in payment of principal.

History: En. Sec. 3-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-304; amd. Sec. 117, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Notice to purchaser. (1) The purchaser has notice of a claim or defense if:

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know:

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be 30 days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this chapter to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it."

Cross-References

GENERAL

When promise or order unconditional, 30-3-105.

Other writings affecting instrument, 30-3-119.

Holder in due course, 30-3-302.

Alteration, 30-3-407.

DEFINITIONAL

Accommodation party, 30-3-415.
Agreement, 30-1-201.
Alteration, 30-3-407.
Bank, 30-1-201.
Check, 30-3-104.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Issue, 30-3-102.
Negotiation, 30-3-202.
Notice, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Presumed, 30-1-201.
Promise, 30-3-102.
Purchaser, 30-1-201.
Reasonable time, 30-1-204.
Signed, 30-1-201.
Term, 30-1-201.

30-3-305. Defenses and claims in recoupment. (1) Except as stated in subsection (2), the right to enforce the obligation of a party to pay the instrument is subject to the following:

(a) A defense of the obligor based on:

(i) infancy of the obligor to the extent that it is a defense to a simple contract;

(ii) duress, lack of legal capacity, or illegality of the transaction that nullifies the obligation of the obligor;

(iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or

(iv) discharge of the obligor in insolvency proceedings.

(b) A defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract.

(c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument. The claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1)(a) but is not subject to defenses of the obligor stated in subsection (1)(b) or claims in recoupment stated in subsection (1)(c) against a person other than the holder.

(3) Except as stated in subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (30-3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, or lack of legal capacity.

History: En. Sec. 3-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-305; amd. Sec. 118, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Rights of a holder in due course. To the extent that a holder is a holder in due course he takes the instrument free from:

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except:

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument."

Cross-References

GENERAL

Incomplete instruments, 30-3-115.

Reacquisition, 30-3-208.

Notice to purchaser, 30-3-304.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signatures, defenses, and due course, 30-3-307.

Alteration, 30-3-407.

DEFINITIONAL

Contract, 30-1-201.

Holder in due course, 30-3-302.

Insolvency proceedings, 30-1-201.

Instrument, 30-3-102.

Notice, 30-1-201.

Party, 30-1-201.

Person, 30-1-201.

Term, 30-1-201.

30-3-306. Claims to an instrument. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

History: En. Sec. 3-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-306; amd. Sec. 119, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Rights of one not holder in due course. Unless he has the rights of a holder in due course any person takes the instrument subject to:

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (30-3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive endorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party."

Cross-References

GENERAL

Holder in due course, 30-3-302.

Rights of a holder in due course, 30-3-305.

Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Action, 30-1-201.

Contract, 30-1-201.

Delivery, 30-1-201.

Holder in due course, 30-3-302.

Instrument, 30-3-102.

Party, 30-1-201.

Person, 30-1-201.

Rights, 30-1-201.

30-3-307. Proof of signatures and status as holder in due course. (1) In an action with respect to an instrument, the authenticity of and authority to make each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person pursuant to 30-3-403(1).

(2) If the validity of signatures is admitted or proved and there is compliance with subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under 30-3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course that are not subject to the defense or claim.

History: En. Sec. 3-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-307; amd. Sec. 121, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Burden of establishing signatures, defenses and due course. (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course."

Cross-References

GENERAL

Holder in due course, 30-3-302.
Rights of a holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Signature, 30-3-401.
Signature by authorized representative, 30-3-403.
Unauthorized signatures, 30-3-404.

DEFINITIONAL

Action, 30-1-201.
Burden of establishing, 30-1-201.
Defendant, 30-1-201.
Genuine, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Presumed, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.

30-3-308. Notice of breach of fiduciary duty. (1) This section applies if an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty. Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person. "Fiduciary" means an agent, trustee, partner, corporation officer or director, or other representative owing a fiduciary duty with respect to the instrument. "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty is owed.

(2) If the instrument is payable to the fiduciary, as such, or to the represented person, the taker has notice of the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If the instrument is made or drawn by the fiduciary, as such, payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If the instrument is made or drawn by or on behalf of the represented person to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

History: En. Sec. 120, Ch. 410, L. 1991.

30-3-309. Enforcement of lost, destroyed, or stolen instrument. (1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) that person was in rightful possession of the instrument and entitled to enforce it when loss of possession occurred;

(b) the loss of possession was not the result of a voluntary transfer by that person or a lawful seizure; and

(c) that person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument pursuant to subsection (1) shall prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, 30-3-307 applies to the case as though the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

History: En. Sec. 122, Ch. 410, L. 1991.

30-3-310. Effect of instrument on obligation for which taken. (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2) Unless otherwise agreed and except as provided in subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is

suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken.

(3) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(4) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(5) If the check or note is dishonored and the obligee of the obligation for which the instrument was taken has possession of the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person that is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(6) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent, the obligee's rights against the obligor are limited to enforcement of the instrument.

(7) If an instrument other than one described in subsection (1) or (2) is taken for an obligation, the effect is:

(a) that stated in subsection (1) if the instrument is one on which a bank is liable as maker or acceptor; or

(b) that stated in subsection (2) in any other case.

History: En. Sec. 123, Ch. 410, L. 1991.

30-3-311. Accord and satisfaction by use of instrument. (1) This section applies if a person against whom a claim is asserted proves that:

(a) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim;

(b) the amount of the claim was unliquidated or subject to a bona fide dispute; and

(c) the claimant obtained payment of the instrument.

(2) Unless subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to subsection (4), a claim is not discharged under subsection (2) if the claimant is an organization and proves that within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place and the instrument or accompanying communication was not received by that designated person, office, or place.

(4) Notwithstanding subsection (3), a claim is discharged under subsection (2) if the person against whom the claim is asserted proves that within a

reasonable time before collection of the instrument was initiated, an agent of the claimant having direct responsibility with respect to the disputed obligation knew that the instrument was tendered in full satisfaction of the claim or received the instrument and any accompanying written communication.

History: En. Sec. 124, Ch. 410, L. 1991.

Part 4

Liability of Parties

30-3-401. Signature. (1) A person is not liable on an instrument unless:

(a) the person signed the instrument; or

(b) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under 30-3-403.

(2) A signature is made:

(a) manually or by means of a device or machine; and

(b) by use of any name, including any trade or assumed name, or by any word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

History: En. Sec. 3-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-401; amd. Sec. 125, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature."

Cross-References

GENERAL

Negotiation, 30-3-202.

Wrong or misspelled name, 30-3-203.

Signature by authorized representative, 30-3-403.

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Definition and operation of acceptance, 30-3-410.

DEFINITIONAL

Instrument, 30-3-102.

Person, 30-1-201.

Signed, 30-1-201.

Written, 30-1-201.

30-3-402. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-402.

30-3-403. Signature by representative. (1) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(2) If a representative signs the name of the representative to an instrument and that signature is an authorized signature of the represented person, the following rules apply:

(a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(b) Subject to subsection (3), if the form of the signature does not show unambiguously that the signature is made in a representative capacity, or the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties to the instrument did not intend the representative to be liable on the instrument.

(3) If a representative signs the name of the representative as drawer of a check without indication of the representative's status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

History: En. Sec. 3-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-403; amd. Sec. 126, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Signature by authorized representative. (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument:

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity."

Cross-References

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.

Signature, 30-3-401.

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

DEFINITIONAL

Instrument, 30-3-102.

Person, 30-1-201.

Representative, 30-1-201.

Signature, 30-3-401.

30-3-404. Unauthorized signatures. (1) Unless otherwise provided in this chapter, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

(2) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is missing.

(3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter that makes the unauthorized signature effective for the purposes of this chapter.

History: En. Sec. 3-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-404; amd. Sec. 127, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this chapter. Such ratification does not of itself affect any rights of the person ratifying against the actual signer."

Cross-References

GENERAL

Facsimile signatures or seals of public officers, misuse, 2-16-114.

Burden of establishing signatures, defenses, and due course, 30-3-307.

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Issuing a bad check, 45-6-316.

Forgery, 45-6-325.

DEFINITIONAL

Good faith, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.
Signed, 30-1-201.
Unauthorized signature, 30-1-201.
Value, 30-3-303.

30-3-405. Impostors — fictitious payees. (1) If an impostor by use of the mails or otherwise induces the maker or drawer of an instrument to issue the instrument to the impostor or to a person acting in concert with the impostor by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection.

(2) If a person whose intent determines to whom an instrument is payable (30-3-126(1) or (2)) does not intend the person identified as payee to have any interest in the instrument or if the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(a) Any person in possession of the instrument is its holder.

(b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection.

(3) Under subsection (1) or (2), an indorsement is made in the name of a payee if:

(a) it is made in a name substantially similar to that of the payee; or

(b) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(4) With respect to an instrument to which subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

History: En. Sec. 3-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-405; amd. Sec. 128, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Impostors — signature in name of payee. (1) An endorsement by any person in the name of a named payee is effective if:

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so endorsing."

Cross-References

GENERAL

Signature, 30-3-401.

Signature by authorized representative, 30-3-403.

Unauthorized signatures, 30-3-404.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Forgery, 45-6-325.

DEFINITIONAL

Instrument, 30-3-102.

Issue, 30-3-102.

Person, 30-1-201.

Signature, 30-3-401.

30-3-406. Negligence contributing to forged signature or alteration of instrument. (1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a a person who in good faith pays the instrument or takes it for value.

(2) If the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.

History: En. Sec. 3-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-406; amd. Sec. 130, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Negligence contributing to alteration or unauthorized signature. Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business."

Cross-References

GENERAL

Signature, 30-3-401.

Unauthorized signatures, 30-3-404.

Alteration, 30-3-407.

DEFINITIONAL

Alteration, 30-3-407.

Good faith, 30-1-201.

Holder in due course, 30-3-302.

Instrument, 30-3-102.

Unauthorized signature, 30-1-201.

30-3-407. Alteration. (1) "Alteration" means:

(a) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party to the instrument; or

(b) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of any party to the instrument.

(2) Except as provided in subsection (3), an alteration fraudulently made discharges any party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges any party, and the instrument may be enforced according to its original terms.

(3) A person paying a fraudulently altered instrument or taking it for value in good faith and without notice of the alteration may enforce rights with respect to the instrument:

(a) according to its original terms; or

(b) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

History: En. Sec. 3-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-407; amd. Sec. 131, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in:

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course:

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed."

Cross-References

GENERAL

Altered bill or note, limitation on action because of banks' payment, 27-2-213.

Incomplete instruments, 30-3-115.

Notice to purchaser, 30-3-304.

Rights of a holder in due course, 30-3-305.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signatures, defenses, and due course, 30-3-307.

When bank may charge customer's account, 30-4-401.

DEFINITIONAL

Contracts, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Signed, 30-1-201.
Writing, 30-1-201.

30-3-408. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-408, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-408.

30-3-409. Drawee not liable on unaccepted draft. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

History: En. Sec. 3-409, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-409; amd. Sec. 132, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current catchline for former catchline that read: "Draft not an assignment"; deleted former (2) that read: "(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance"; and made minor changes in style.

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.

Acceptance varifying draft, 30-3-412.

Contract of accommodation party, 30-3-415.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Acceptance, 30-3-410.
Check, 30-3-104.
Contract, 30-1-201.
Draft, 30-3-104.
Instrument, 30-3-102.
Letter of credit, 30-5-103.

30-3-410. Acceptance of draft — certified check. (1) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(2) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(3) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (1) or by a writing on the check that indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

History: En. Sec. 3-410, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-410; amd. Sec. 133, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current catchline for former catchline that read: "Definition and operation of acceptance"; in (1), near middle of first sentence after "signed", substituted "agreement to pay a" for "engagement to honor the" and substituted last sentence relating to time and effect of acceptance for former sentence that read: "It becomes operative when completed by delivery or notification"; inserted (4) defining certified check; and made minor changes in style.

Cross-References

GENERAL

What constitutes acceptance of goods, 30-2-606.

Signature, 30-3-401.

Draft not an assignment, 30-3-409.

Acceptance varying draft, 30-3-412.

Warranties on presentment and transfer, 30-3-417.

Conversion of instrument — innocent representative, 30-3-419.

DEFINITIONAL

Delivery, 30-1-201.
Draft, 30-3-104.
Good faith, 30-1-201.
Holder, 30-1-201.
Honor, 30-1-201.
Notification, 30-1-201.

30-3-411. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-411, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-411.

30-3-412. Acceptance varying draft. (1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(2) The terms of the draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

History: En. Sec. 3-412, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-412; amd. Sec. 134, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, substituted "If the terms of a drawee's acceptance vary from the terms of" for "Where the drawee's proffered acceptance in any manner varies" and at end of second sentence substituted "may cancel the acceptance" for "is entitled to have his acceptance canceled"; and in (3), after "draft", inserted "the obligation of" and near end substituted "expressly assent to the acceptance" for "affirmatively assent".

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.

Contract of maker, drawer, and acceptor, 30-3-413.

How presentment made, 30-3-504.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Draft, 30-3-104.
Holder, 30-1-201.
Term, 30-1-201.
Written, 30-1-201.

30-3-413. Obligation of maker. (1) A maker of a note is obliged to pay the note:

(a) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(b) if the maker signed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the note or to an indorser that paid the note pursuant to 30-3-414.

History: En. Sec. 3-413, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-413; amd. Sec. 136, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Contract of maker, drawer and acceptor. (1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to 30-3-115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any endorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to endorse."

Cross-References

GENERAL

Treble damages for issuing bad check, 27-1-717.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Alteration, 30-3-407.

Acceptance varying draft, 30-3-412.

Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Contract, 30-1-201.
Draft, 30-3-104.
Holder, 30-1-201.

Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Party, 30-1-201.

30-3-414. Obligation of indorser. (1) Subject to subsections (2) through (4) and to 30-3-415(4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed or if the indorser indorsed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser that paid the instrument pursuant to this section.

(2) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (1) to pay the instrument.

(3) If notice of dishonor of an instrument is required by 30-3-508 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (1) is discharged.

(4) If a draft is accepted by a bank after an indorsement is made and the acceptor dishonors the draft, the indorser is not liable under subsection (1) to pay the instrument.

(5) If an indorser of a check is liable under subsection (1) and the check is not presented for payment or given to a depositary bank for collection within 30 days after the day the indorsement was made, the liability of the indorser under subsection (1) is discharged.

History: En. Sec. 3-414, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-414; amd. Sec. 139, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Contract of endorser — order of liability. (1) Unless the endorsement otherwise specifies (as by such words as "without recourse") every endorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his endorsement to the holder or to any subsequent endorser who takes it up, even though the endorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree endorsers are liable to one another in the order in which they endorse, which is presumed to be the order in which their signatures appear on the instrument."

Cross-References

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.

Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Contract, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Presumed, 30-1-201.
Signature, 30-3-401.

30-3-415. Instruments signed for accommodation. (1) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another part to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (4), is obliged to pay the

instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and regardless of whether the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in 30-3-607, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(a) execution of judgment against the other party has been returned unsatisfied;

(b) the other party is insolvent or in an insolvency proceeding;

(c) the other party cannot be served with process; or

(d) it is otherwise apparent that payment cannot be obtained from the party whose obligation is guaranteed.

(5) An accommodation party that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

History: En. Sec. 3-415, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-415; amd. Sec. 140, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Contract of accommodation party. (1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An endorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party."

Cross-References

GENERAL

Rights of a holder in due course, 30-3-305.

Rights of one not holder in due course, 30-3-306.

Payment or satisfaction, 30-3-603.

Tender of payment, 30-3-604.

DEFINITIONAL

Holder in due course, 30-3-302.

Instrument, 30-3-102.

Notice, 30-1-201.

Party, 30-1-201.

Presentment, 30-3-504.

Signed, 30-1-201.

Writing, 30-1-201.

30-3-416. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-416, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-416.

30-3-417. Transfer warranties. (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(a) the warrantor is a person entitled to enforce the instrument;

(b) all signatures on the instrument are authentic and authorized;

(c) the instrument has not been altered;

(d) the instrument is not subject to a defense or claim in recoupment (30-3-305(1)) of any party that can be asserted against the warrantor; and

(e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) A person to whom the warranties under subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History: En. Sec. 3-417, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-417; amd. Sec. 141, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Warranties on presentment and transfer. (1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by endorsement to any subsequent holder who takes the instrument in good faith that:

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority."

Cross-References

GENERAL

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Contract of endorser — order of liability, 30-3-414.

Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

Warranty on sale of written instrument, 30-11-220.

DEFINITIONAL

Acceptance, 30-3-410.
Alteration, 30-3-407.
Bank, 30-1-201.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Note, 30-3-104.
Party, 30-1-201.
Person, 30-1-201.
Signature, 30-3-401.
Term, 30-1-201.

30-3-418. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-418, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-418.

30-3-419. Conversion of instrument. (1) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if the instrument lacks an indorsement necessary for negotiation and it is purchased or taken for collection or the drawee takes the instrument and makes payment to a person not entitled to receive payment. An action for conversion of an instrument may not be brought by:

(a) the maker, drawer, or acceptor of an instrument; or

(b) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or copayee.

(2) In an action under subsection (1), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(3) A representative, other than a depositary bank, that has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

History: En. Sec. 3-419, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-419; amd. Sec. 144, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Conversion of instrument — innocent representative. (1) An instrument is converted when:

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged endorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the

measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this code concerning restrictive endorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item endorsed restrictively (30-3-205 and 30-3-206) are not paid or applied consistently with the restrictive endorsement of an endorser other than its immediate transferor."

Cross-References

GENERAL

Draft not an assignment, 30-3-409.

Definition and operation of acceptance, 30-3-410.

Warranties on presentment and transfer, 30-3-417.

Payment or satisfaction, 30-3-603

DEFINITIONAL

Acceptance, 30-3-410.
Action, 30-1-201.
Bank, 30-1-201.
Collecting bank, 30-3-102, 30-4-105.
Depositary bank, 30-3-102, 30-4-105.
Good faith, 30-1-201.
Instrument, 30-3-102.
Intermediary bank, 30-3-102, 30-4-105.
On demand, 30-3-108.
Person, 30-1-201.
Presumed, 30-1-201.
Representative, 30-1-201.

30-3-420. Employer responsibility for fraudulent indorsement by employee. (1) This section applies to fraudulent indorsements of instruments with respect to which an employer has entrusted an employee with responsibility as part of the employee's duties. The following definitions apply to this section:

(a) "Employee" includes, in addition to an employee of an employer, an independent contractor and employee of an independent contractor retained by the employer.

(b) "Fraudulent indorsement" means:

(i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer; or

(ii) in the case of an instrument with respect to which the employer is drawer or maker, a forged indorsement purporting to be that of the person identified as payee.

(c) (i) "Responsibility" with respect to instruments means authority to:

(A) sign or indorse instruments on behalf of the employer;

(B) process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition;

(C) prepare or process instruments for issue in the name of the employer;

(D) supply information determining the names or addresses of payees of instruments to be issued in the name of the employer;

(E) control the disposition of instruments to be issued in the name of the employer; or

(F) otherwise act with respect to instruments in a responsible capacity.

(ii) The term does not include the assignment of duties that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(2) For purposes of determining the rights and liabilities of a person who in good faith pays an instrument or takes it for value or for collection, if an employee entrusted with responsibility with respect to the instrument or a person acting in concert with the employee makes a fraudulent indorsement to the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(3) Under subsection (2), an indorsement is made in the name of the person to whom an instrument is payable if:

(a) it is made in a name substantially similar to the name of that person; or

(b) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

History: En. Sec. 129, Ch. 410, L. 1991.

30-3-421. Refusal to pay cashier's checks, teller's checks, and certified checks. (1) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(3) Expenses or consequential damages under subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because:

(a) the bank suspends payments;

(b) the obligated bank is asserting a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;

(c) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or

(d) payment is prohibited by law.

History: En. Sec. 135, Ch. 410, L. 1991.

30-3-422. Obligation of acceptor. (1) An acceptor of a draft is obliged to pay the draft:

(a) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms;

(b) if the acceptance varies the terms of the draft, according to the terms of the draft as varied; or

(c) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser that paid the draft pursuant to 30-3-423 or 30-3-414.

(3) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. The obligation of the acceptor is the amount of the instrument at the time it was negotiated to the holder in due course if:

(a) the certification or acceptance does not state an amount;

(b) the instrument is subsequently altered by raising its amount; and

(c) the instrument is then negotiated to a holder in due course.

History: En. Sec. 137, Ch. 410, L. 1991.

30-3-423. Obligation of drawer. (1) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft:

(a) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(b) if the drawer signed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the draft or to an indorser that paid the draft pursuant to 30-3-414.

(3) If a draft is accepted by a bank and the acceptor dishonors the draft, the drawer has no obligation to pay the draft because of the dishonor, regardless of when or by whom acceptance was obtained.

(4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser stated in 30-3-414(1) and (3).

(5) Words in a draft indicating that the draft is drawn without recourse are effective to disclaim all liability of the drawer to pay the draft if the draft is not a check, but they are not effective to disclaim the obligation stated in subsection (1) if the draft is a check.

(6) The drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds if:

(a) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date;

(b) the drawee suspends payments after expiration of the 30-day period without paying the check; and

(c) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check.

History: En. Sec. 138, Ch. 410, L. 1991.

30-3-424. Presentment warranties. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making the payment or accepting the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor, and if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under 30-3-405 or 30-3-420 or the drawer is precluded under 30-3-406 or 30-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) This subsection applies if a dishonored draft is presented for payment to the drawer or an indorser or any other instrument is presented for payment to a party obliged to pay the instrument and payment is received. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History: En. Sec. 142, Ch. 410, L. 1991.

30-3-425. Payment or acceptance by mistake. (1) Except as provided in subsection (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped under 30-4-403, the signature of the purported drawer of the draft was authorized, or the balance in the drawer's account with the drawee represented available funds, the drawee may recover the amount paid for the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(2) Except as provided in subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (1), the person paying or accepting may recover the amount paid or revoke acceptance to the extent allowed by the law governing mistake and restitution.

(3) The remedies provided by subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value. This subsection does not limit remedies provided by 30-3-424 for breach of warranty.

History: En. Sec. 143, Ch. 410, L. 1991.

Part 5

Presentment, Notice of Dishonor, and Protest

30-3-501. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-501.

30-3-502. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-502.

30-3-503. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-503.

30-3-504. Presentment. (1) "Presentment" means a demand:

(a) to pay an instrument made to the maker, drawee, or acceptor or, in the case of a note of accepted draft payable at a bank, to the bank; or

(b) to accept a draft made to the drawee by a person entitled to enforce the instrument.

(2) Subject to chapter 4, agreement of the parties, clearing house rules and the like:

(a) presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; is effective if made to any one of two or more makers, acceptors, drawees, or other payors; and

(b) without dishonoring the instrument, the party to whom presentment is made may:

(i) treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour;

(ii) require exhibition of the instrument;

(iii) require reasonable identification of the person making presentment and evidence of authority to make it if made on behalf of another person;

(iv) require a signed receipt on the instrument for any payment made or surrender of the instrument if full payment is made;

(v) return the instrument for lack of a necessary indorsement; or

(vi) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other law or applicable rule.

History: En. Sec. 3-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-504; amd. Sec. 145, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "How presentment made. (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made:

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearinghouse; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made:

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in 30-4-210 presentment may be made in the manner and with the result stated in that section."

Cross-References

GENERAL

Acceptance varying draft, 30-3-412.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Clearinghouse, 30-4-104.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Note, 30-3-104.
Party, 30-1-201.
Person, 30-1-201.

30-3-505. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 3-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-505.

30-3-506. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 3-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-506.

30-3-507. Repealed. Sec. 230, Ch. 410, L. 1991.
History: En. Sec. 3-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-507.

30-3-508. Notice of dishonor. (1) The obligation of an indorser stated in 30-3-414(1) and the obligation of a drawer stated in 30-3-423(3) may not be enforced unless:

(a) the indorser or drawer is given notice of dishonor of the instrument complying with this section; or

(b) notice of dishonor is excused under 30-3-513(3).

(2) Notice of dishonor may be given to any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is a sufficient notice of dishonor.

(3) Subject to 30-3-513(4), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by a bank before

midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument and by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

History: En. Sec. 3-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-508; amd. Sec. 147, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified."

Cross-References

GENERAL

Right of charge-back or refund, 30-4-212.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Customer, 30-4-104.
Holder, 30-1-201.
Insolvency proceedings, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Midnight deadline, 30-4-104.
Notifies, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.
Send, 30-1-201.
Written and writing, 30-1-201.

30-3-509. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-509.

30-3-510. Evidence of dishonor. (1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(a) a document regular in form as provided in subsection (2) that purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(c) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business that shows dishonor, even if there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice consul or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

History: En. Sec. 3-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-510; amd. Sec. 149, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: At end of catchline deleted "and notice of dishonor"; in (1)(a), before "purports", substituted "subsection (2) that" for "the preceding section which"; in (1)(b), after "refused", inserted "unless reasons for the refusal are stated and the" and after "reasons" inserted "are not"; inserted (2) concerning protest made by certain persons; and made minor changes in style.

Cross-References

GENERAL

Notice of dishonor, 30-3-508.

DEFINITIONAL

Acceptance, 30-3-410.
Collecting bank, 30-4-105.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presumption, 30-1-201.
Writing, 30-1-201.

30-3-511. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-511.

30-3-512. Dishonor. (1) Dishonor of a note is governed by the following rules:

(a) If the note is payable on demand, the note is dishonored if presentment is duly made and the note is not paid on the day of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and subsection (1)(b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(a) If a check is presented for payment otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under 30-4-301 or 30-4-302 or becomes accountable for the amount of the check under 30-4-302.

(b) If the draft is payable on demand and subsection (2)(a) does not apply, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(c) If the draft is payable on a date stated in the draft, the draft is dishonored if:

(i) presentment for payment is duly made and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or

(ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If the draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsections (2)(b) through (2)(d) except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subsections.

(4) Dishonor of an accepted draft is governed by the following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under 30-3-513, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

History: En. Sec. 146, Ch. 410, L. 1991.

30-3-513. Excused presentment and notice of dishonor. (1) Presentment for payment or acceptance of an instrument is excused if:

(a) the person entitled to present the instrument cannot with reasonable diligence make presentment;

(b) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings;

(c) by the terms of the instrument, presentment is not necessary to enforce the obligation of indorsers or the drawer; or

(d) the drawer or indorser whose obligation is being enforced waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted.

(2) Presentment for payment or acceptance of a draft is also excused if the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(3) Notice of dishonor is excused if by the terms of the instrument, notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument or the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(4) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

History: En. Sec. 148, Ch. 410, L. 1991.

Part 6

Discharge

30-3-601. Discharge and effect of discharge. (1) The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party that would discharge an obligation to pay money under a simple contract.

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

History: En. Sec. 3-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-601; amd. Sec. 150, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Discharge of parties. (1) The extent of the discharge of any party from liability on an instrument is governed by the sections on:

(a) payment or satisfaction (30-3-603); or

(b) tender of payment (30-3-604); or

(c) cancellation or renunciation (30-3-605); or

(d) impairment of right of recourse or of collateral (30-3-606); or

(e) reacquisition of the instrument by a prior party (30-3-208); or

(f) fraudulent and material alteration (30-3-407); or

(g) certification of a check (30-3-411); or

(h) acceptance varying a draft (30-3-412); or

(i) unexcused delay in presentment or notice of dishonor or protest (30-3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:

(a) reacquires the instrument in his own right; or

(b) is discharged under any provision of this chapter, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (30-3-606)."

Cross-References

GENERAL

Rights of a holder in due course, 30-3-305.

Rights of one not holder in due course, 30-3-306.

Burden of establishing signatures, defenses, and due course, 30-3-307.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Contract of accommodation party, 30-3-415.

DEFINITIONAL

Action, 30-1-201.
Agreement, 30-1-201.
Alteration, 30-3-407.
Check, 30-3-104.
Contract, 30-1-201.
Draft, 30-3-104.
Instrument, 30-3-102.
Money, 30-1-201.
Notice of dishonor, 30-3-508.
Party, 30-1-201.
Presentment, 30-3-504.
Rights, 30-1-201.

30-3-602. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-602.

30-3-603. Payment. (1) Subject to subsection (2), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under 30-3-306 by another person.

(2) The obligation of a party to pay the instrument is not discharged under subsection (1) if:

(a) a claim to the instrument under 30-3-306 is enforceable against the party receiving payment and:

(i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) the person making payment knows that the instrument is a stolen instrument and pays a person that it knows is in wrongful possession of the instrument.

History: **En. Sec. 3-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-603; amd. Sec. 151, Ch. 410, L. 1991.**

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Payment or satisfaction. (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (30-3-201)."

Cross-References

GENERAL

Restrictive endorsements, 30-3-205.
Reacquisition, 30-3-208.
Rights of a holder, 30-3-301.
Rights of one not holder in due course, 30-3-306.
Contract of accommodation party, 30-3-415.
Discharge of parties, 30-3-601.
Tender of payment, 30-3-604.

DEFINITIONAL

Action, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Order, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.

30-3-604. Tender of payment. (1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(3) If tender of payment of an amount due on an instrument is made by or on behalf of the obligor to the person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is considered to have made tender of payment on the due date to the person entitled to enforce the instrument.

History: En. Sec. 3-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-604; amd. Sec. 152, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender."

Cross-References

GENERAL

How presentment made, 30-3-504.
Discharge of parties, 30-3-601.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
On demand, 30-3-108.
Party, 30-1-201.
Right, 30-1-201.

30-3-605. Discharge by cancellation or renunciation. (1) A person entitled to enforce an instrument may, with or without consideration, discharge the obligation of a party to pay the instrument:

(a) by an intentional voluntary act, such as surrender of the instrument to the party; destruction, mutilation, or cancellation of the instrument; cancellation or striking out of the party's signature; or the addition of words to the instrument indicating discharge; or

(b) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(2) Cancellation or striking out of an indorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the indorsement.

History: En. Sec. 3-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-605; amd. Sec. 153, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Cancellation and renunciation. (1) The holder of an instrument may even without consideration discharge any party:

(a) in any manner apparent on the face of the instrument or the endorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto."

Cross-References

GENERAL

Discharge of parties, 30-3-601.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.
Signed, 30-1-201.
Writing, 30-1-201.

30-3-606. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 3-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-606.

30-3-607. Discharge of indorsers and accommodation parties. (1) For the purposes of this section, the term "indorser" includes a drawer having the obligation stated in 30-3-423(3).

(2) Discharge of the obligation of a party to the instrument under 30-3-605 does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party to the instrument, including an extension of the due date, there is discharge of the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The indorser or accommodation party is considered to have suffered loss as a result of the modification equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was less than the amount of the right of recourse.

(4) If the obligation of a party to an instrument is secured by an interest in collateral and impairment of the value of the interest is caused by a person entitled to enforce the instrument, there is discharge of the obligation of an indorser or accommodation party having a right of recourse against the obligor to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge or the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(5) If the obligation of a party to an instrument is secured by an interest in collateral not provided by an accommodation party and the value of the interest is impaired by a person entitled to enforce the instrument, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (4), the party is considered to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(6) Under subsection (4) or (5), causation of impairment includes:

(a) failure to obtain or maintain perfection or recordation of the interest in collateral;

(b) release of collateral without substitution of collateral of equal value;

(c) failure to perform a duty to preserve the value of collateral owed, under chapter 9 or other law, to a debtor or surety or other person secondarily liable; or

(d) failure to comply with applicable law in disposing of collateral.

(7) An accommodation party is not discharged under subsection (3) or (4) unless the person agreeing to the modification or causing the impairment knows of the accommodation or has notice under 30-3-415(3) that the instrument was signed for accommodation. There is no discharge of any party under subsection (3), (4), or (5) if:

(a) the party asserting discharge consents to the event or conduct that is the basis of the discharge; or

(b) the instrument or a separate agreement of the party provides for waiver of discharge under this section, either specifically or by general language, indicating that parties to the instrument waive defenses based on suretyship or impairment of collateral.

History: **En. Sec. 154, Ch. 410, L. 1991.**

Part 7

Advice of International Sight Draft (Repealed. Sec. 230, Ch. 410, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

30-3-701. En. Sec. 3-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-701.

Part 8

Miscellaneous (Repealed. Sec. 230, Ch. 410, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

30-3-801. En. Sec. 3-801, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-801.

30-3-802. En. Sec. 3-802, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-802.

30-3-803. En. Sec. 3-803, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-803.

30-3-804. En. Sec. 3-804, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-804.

30-3-805. En. Sec. 3-805, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-805.

CHAPTER 4

UNIFORM COMMERCIAL CODE BANK DEPOSITS AND COLLECTIONS

Part 1 — General Provisions and Definitions

30-4-101. Short title.
30-4-102. Applicability.
30-4-103. Variation by agreement — measure of damages — action constituting ordinary care.
30-4-104. Definitions and index of definitions.
30-4-105. "Bank" — "depositary bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank".

30-4-106. Separate office of a bank.
30-4-107. Time of receipt of items.
30-4-108. Delays.
30-4-109. Repealed.
30-4-110. Payable through or payable at bank — collecting bank.
30-4-111. Truncation.
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Part 2 — Collection of Items
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30-4-201. Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank".
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30-4-208. Security interest of collecting bank in items, accompanying documents, and proceeds.
30-4-209. When bank gives value for purposes of holder in due course.
30-4-210. Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties.
30-4-211. Medium and time of settlement by bank.
30-4-212. Right of charge-back or refund — liability of collecting bank — return of item.
30-4-213. Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal.
30-4-214. Insolvency and preference.
30-4-215. Presentment warranties.
30-4-216. Encoding and retention warranties.

Part 3 — Collection of Items—Payor Banks

30-4-301. Deferred posting — recovery of payment by return of items — time of dishonor — return of items by payor bank.
30-4-302. Payor bank's responsibility for late return of item.
30-4-303. When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified.

Part 4 — Relationship Between Payor Bank and Its Customer

30-4-401. When bank may charge customer's account.
30-4-402. Bank's liability to customer for wrongful dishonor — time of determining insufficiency of account.
30-4-403. Customer's right to stop payment — burden of proof of loss.
30-4-404. Bank not obligated to pay check more than six months old.
30-4-405. Death or incompetence of customer.
30-4-406. Customer's duty to discover and report unauthorized signature or alteration.
30-4-407. Payor bank's right to subrogation on improper payment.

Part 5 — Collection of Documentary Drafts

30-4-501. Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor.
30-4-502. Presentment of "on arrival" drafts.
30-4-503. Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need.
30-4-504. Privilege of presenting bank to deal with goods — security interest for expenses.

Chapter Cross-References

Laws not repealed — branch banking, 30-1-111.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

Part 1

General Provisions and Definitions

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

30-4-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections.

History: En. Sec. 4-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-101.

30-4-102. Applicability. (1) To the extent that items within this chapter are also within the scope of chapters 3, 5, and 8, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter govern those of chapter 3 but the provisions of chapters 5 and 8 govern those of this chapter.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

History: En. Sec. 4-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-102; amd. Sec. 155, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in two places, inserted reference to chapter 5; and made minor changes in style.

Cross-References

GENERAL

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Bank deposits and collections, Title 30, ch. 4.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Notice to purchaser of adverse claims, 30-8-304.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

Secured transactions, sales of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Bank, 30-1-201.

Branch, 30-1-201.

Item, 30-4-104.

30-4-103. Variation by agreement — measure of damages — action constituting ordinary care. (1) The effect of the provisions of this chapter may be varied by agreement, but the parties to the agreement may not disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(2) Federal reserve regulations and operating circulars, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to federal reserve regulations or operating circulars constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse and similar rules or with a general banking usage not disapproved by this chapter, constitutes prima facie the exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures that may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

History: En. Sec. 4-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-103; amd. Sec. 156, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (2) and (3) substituted "circulars" for "letters"; and made minor changes in style.

Cross References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Responsibility for collection — when action seasonable, 30-4-202.

DEFINITIONAL

Bank, 30-1-201.
Good faith, 30-1-201.
Item, 30-4-104.
Usage, 30-1-205.

30-4-104. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "account" means any deposit or credit account with a bank and includes a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) "afternoon" means the period of a day between noon and midnight;

(c) "banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "clearinghouse" means an association of banks or other payors regularly clearing items;

(e) "customer" means a person having an account with a bank or for whom a bank has agreed to collect items and includes a bank maintaining an account at another bank;

(f) "documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities or transfer statements for uncertificated securities, or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(g) "draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an order;

(h) "item" means an instrument or a promise or an order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by chapter 4A or a credit or debit card slip.

(i) "midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(j) "settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(k) "suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Bank". 30-4-105.
"Collecting bank". 30-4-105.
"Depositary bank". 30-4-105.
"Intermediary bank". 30-4-105.
"Payor bank". 30-4-105.
"Presenting bank". 30-4-105.
"Presentment notice". 30-4-111.

(3) The following definitions in other chapters apply to this chapter:

"Acceptance". 30-3-410.
"Alteration". 30-3-407.
"Cashier's check". 30-3-104.
"Certificate of deposit". 30-3-104.
"Certified check". 30-3-410.
"Check". 30-3-104.
"Drawee". 30-3-102.
"Good faith". 30-3-102.
"Holder in due course". 30-3-302.
"Instrument". 30-3-104.
"Notice of dishonor". 30-3-508.
"Order". 30-3-102.
"Ordinary care". 30-3-102.
"Person entitled to enforce". 30-3-301.
"Presentment". 30-3-504.
"Promise". 30-3-102.
"Prove". 30-3-102.
"Teller's check". 30-3-104.
"Unauthorized signature". 30-3-404.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 4-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-104; amd. Sec. 157, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in definition of account after "any", inserted "deposit or credit" and at end substituted "demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit" for "a checking, time, interest or savings account"; in definition of customer, before "an account", substituted "maintaining" for "carrying"; substituted definition of documentary draft for former definition that read: ""Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft"; inserted definition of draft; substituted definition of item for former definition that read: ""Item" means any instrument for the payment of money even though it is not negotiable but does not include money"; deleted former (1)(i) that read: "(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor"; in definition of settle, at end of first sentence, substituted "agreed" for "instructed"; in (2) inserted references to bank and presentment notice and deleted ""Remitting bank. 30-4-105"; in (3) inserted references to alteration, cashier's check, certified check, drawee, good faith, instrument, order, ordinary care, person entitled to enforce, promise, prove, teller's check, and unauthorized signature and deleted ""Certification". 30-3-411", ""Draft". 30-3-104", ""Protest". 30-3-509", and ""Secondary party". 30-3-102"; and made minor changes in style.

Cross-References

DEFINITIONAL

Bank, 30-1-201.
Documents, 30-1-201.
Money, 30-1-201.
Negotiable, 30-3-104.
Notice, 30-1-201.
Person, 30-1-201.
Securities, 30-8-102.

30-4-105. "Bank" — "depositary bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank". In this chapter, unless the context otherwise requires:

(1) "bank" means any person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "payor bank" means a bank that is the drawee of a draft;

(4) "intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payor bank;

(5) "collecting bank" means a bank handling an item for collection except the payor bank;

(6) "presenting bank" means a bank presenting an item except a payor bank.

History: En. Sec. 4-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-105; amd. Sec. 158, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In catchline, at beginning, inserted "Bank" and at end deleted "remitting bank"; inserted definition of bank; in definition of depositary bank, after item, deleted "is transferred for collection" and at end inserted "unless the item is presented for immediate payment over the counter"; in definition of payor bank, at end, substituted "that is the drawee of a draft" for "by which an item is payable as drawn or accepted"; deleted definition of remitting bank that read: ""Remitting bank" means any payor or intermediary bank remitting for an item"; and made minor changes in style.

Cross-References

GENERAL

Commercial paper, Title 30, ch. 3.

DEFINITIONAL

Bank, 30-1-201
Customer, 30-4-104.
Item, 30-4-104.

30-4-106. Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this chapter and under chapter 3.

History: En. Sec. 4-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-106; amd. Sec. 160, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Cross-References

GENERAL

Laws not repealed, 30-1-111.

How presentment made, 30-3-504.

Applicability (bank deposits and collections), 30-4-102.

DEFINITIONAL

Bank, 30-1-201

Branch, 30-1-201.

30-4-107. Time of receipt of items. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

History: En. Sec. 4-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-107.

Cross-References

DEFINITIONAL

Afternoon, 30-4-104.

Bank, 30-1-201.

Banking day, 30-4-104.

Item, 30-4-104.

Money, 30-1-201.

30-4-108. Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank and with or without the approval of any person involved may waive, modify, or extend time limits imposed or permitted by this code for a period not exceeding 2 additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this code or by instructions is excused if:

(a) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank; and

(b) the bank exercises such diligence as the circumstances require.

History: En. Sec. 4-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-108; amd. Sec. 161, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "specific item", inserted "drawn on a payor other than a bank" and after "period not" substituted "exceeding 2 additional banking days without discharge of drawers or indorsers" for "in excess of an additional banking day without discharge of secondary parties and without"; in (2)(a), at beginning, inserted "the delay is", after "communication" inserted "or computer", and after "conditions" inserted "failure of equipment"; at beginning of (2)(b) inserted "the bank"; and made minor changes in style.

Cross-References

GENERAL

Applicability (bank deposits and collections), 30-4-102.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Responsibility for collection — when action seasonable, 30-4-202.

Right of charge-back or refund, 30-4-212.

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Bank, 30-1-201.
Banking day, 30-4-104.
Collecting bank, 30-4-105.
Good faith, 30-1-201.
Item, 30-4-104.
Party, 30-1-201.

30-4-109. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 4-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-109.

30-4-110. Payable through or payable at bank — collecting bank. (1) If an item states that it is "payable through" a bank identified in the item:

(a) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(b) the item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item, the item is drawn on the bank.

History: En. Sec. 159, Ch. 410, L. 1991.

30-4-111. Truncation. (1) "Truncation agreement" means an agreement, clearinghouse rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the truncation agreement.

(2) If presentment is made pursuant to a truncation agreement, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

(3) An intermediary bank handling a presentment notice pursuant to a truncation agreement has the rights of a holder of the item to the same extent it would have had rights in the item if the item had been physically transferred to it in the course of collection.

History: En. Sec. 162, Ch. 410, L. 1991.

30-4-112. Statute of limitations. An action to enforce an obligation, duty, or right arising under this chapter must be commenced within 3 years after the cause of action accrues.

History: En. Sec. 163, Ch. 410, L. 1991.

Part 2

Collection of Items
Depositary and Collecting Banks

30-4-201. Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter —

item endorsed "pay any bank". (1) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final (subsections (3) and (4) of 30-4-211 and subsections (2) and (3) of 30-4-213), the bank with respect to the item is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially endorsed by a bank to a person who is not a bank.

History: En. Sec. 4-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-201; amd. Sec. 164, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in parenthetical, inserted references to 30-4-211(4) and subsections (2) and (3) of 30-4-213 and deleted reference to 30-4-212, after "the bank" inserted "with respect to the item", near end of second sentence, after "rights of", inserted "recoupment or", and in last sentence, after "collection", inserted "or return"; and made minor changes in style.

Cross-References

GENERAL

Reacquisition, 30-3-208.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Transfer of items between banks, 30-4-206.

Insolvency and preference, 30-4-214.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Bank, 30-1-201.

Collecting bank, 30-4-105.

Customer, 30-4-104.

Depositary bank, 30-4-105.

Holder, 30-1-201.

Indorsements, 30-3-202, 30-3-204, 30-3-205.

Item, 30-4-104.

Person, 30-1-201.

Settle, 30-4-104.

30-4-202. Responsibility for collection or return — when action timely. (1) A collecting bank must exercise ordinary care in:

(a) presenting an item or sending it for presentment;

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(c) settling for an item when the bank receives final settlement; and

(d) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank exercises ordinary care under subsection (1) by taking proper action before its midnight deadline following receipt of an item,

notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

History: En. Sec. 4-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-202; amd. Sec. 165, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In catchline, after "collection", inserted "or return" and at end substituted "timely" for "seasonable"; in (1)(b), after "transferor", deleted "or directly to the depositary bank under subsection (2) of 30-4-212"; deleted former (1)(d) that read: "(d) making or providing for any necessary protest"; near beginning of (2), after "bank", inserted "exercises ordinary care under subsection (1) by", at end of first sentence substituted "settlement" for "payment acts seasonably", and in second sentence, after "may", substituted "constitute the exercise of ordinary care" for "be seasonable"; and made minor changes in style.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Time of receipt of items, 30-4-107.

Delays, 30-4-108.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Collecting bank, 30-4-105.

Depositary bank, 30-4-105.

Documentary draft, 30-4-104.

Item, 30-4-104.

Midnight deadline, 30-4-104.

Presentment, Title 30, ch. 3, part 5.

30-4-203. Effect of instructions. Subject to the provisions of chapter 3 concerning conversion of instruments (30-3-419) and restrictive endorsements (30-3-205), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

History: En. Sec. 4-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-203; amd. Sec. 166, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning, after "(30-3-419) and" deleted "the provisions of both Chapter 3 and this chapter concerning" and after "endorsements" inserted "(30-3-205)"; and made minor changes in style.

Cross-References

GENERAL

Restrictive endorsements, 30-3-205.

Payment or satisfaction, 30-3-603.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Collecting bank, 30-4-105.

Restrictive endorsements, 30-3-205.

30-4-204. Methods of sending and presenting — sending directly to payor bank. (1) A collecting bank shall send items by a reasonably prompt method, taking into consideration any relevant instructions, the nature of the item, the number of those items on hand, and the cost of collection involved and the method generally used by it or others to present those items.

(2) A collecting bank may send:

(a) an item directly to the payor bank;

(b) an item to any nonbank payor if authorized by its transferor; and

(c) an item other than documentary drafts to a nonbank payor, if authorized by federal reserve regulation or operating circular, clearinghouse rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

History: En. Sec. 4-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-204; amd. Sec. 167, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In catchline and (2)(a) substituted "directly" for "direct"; in (2)(c), after "operating", substituted "circular" for "letter"; in (3), after "payor bank", inserted "or other payor"; and made minor changes in style.

Cross-References

GENERAL

How presentment made, 30-3-504.

Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties, 30-4-210.

Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.

Presentment of "on arrival" drafts, 30-4-502.

DEFINITIONAL

Collecting bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.

30-4-205. Depositary bank holder of unindorsed item. If a customer is a holder of an item that is delivered to a depositary bank for collection:

(1) the depositary bank becomes a holder of the item at the time it receives the item for collection, whether or not the customer indorses, and if it satisfies the other requirements of 30-3-302, it may be a holder in due course; and

(2) the depositary bank warrants to subsequent collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

History: En. Sec. 4-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-205; amd. Sec. 168, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Supplying missing endorsement — no notice from prior endorsement. (1) A depositary bank which has taken an item for collection may supply any endorsement of the customer which is necessary to title unless the item contains the words "payee's endorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's endorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor."

Cross-References

GENERAL

Restrictive endorsements, 30-3-205.

Conversion of instrument — innocent representative, 30-3-419.

Payment or satisfaction, 30-3-603.

Effect of instructions, 30-4-203.

DEFINITIONAL

Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Intermediary bank, 30-4-105.
Item, 30-4-104.
Payor bank, 30-4-105.
Restrictive endorsements, 30-3-205.

30-4-206. Transfer between banks. Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

History: En. Sec. 4-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-206; amd. Sec. 169, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Made minor change in style.

Cross-References

GENERAL

Negotiation, 30-3-202.

DEFINITIONAL

Bank, 30-1-201.

Item, 30-4-104.

30-4-207. Transfer warranties. (1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(a) the warrantor is a person entitled to enforce the item;

(b) all signatures on the item are authentic and authorized;

(c) the item has not been altered;

(d) the item is not subject to a defense or claim in recoupment stated in 30-3-305(1) of any party to the item that can be asserted against the warrantor; and

(e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) If an item is dishonored, a customer and collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred or, if the transfer was of an incomplete item, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor may not disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(3) A person to whom the warranties under subsection (1) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(4) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History: En. Sec. 4-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-207; amd. Sec. 170, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Warranties of customer and collecting bank on transfer or presentment of items — time for claims. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that:

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item. In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of endorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim."

Cross-References

GENERAL

Contract of endorser — order of liability, 30-3-414.

Warranties on presentment and transfer, 30-3-417.

Transfer between banks, 30-4-206.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

When bank gives value for purposes of holder in due course, 30-4-209.

Payor bank's responsibility for late return of item, 30-4-302.

Customer's duty to discover and report unauthorized signature or alteration, 30-4-406.

DEFINITIONAL

Collecting bank, 30-4-105.
Customer, 30-4-104.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Insolvency proceedings, 30-1-201.
Item, 30-4-104.
Party, 30-1-201.
Payor bank, 30-4-105.
Person, 30-1-201.
Presentment, 30-3-504.
Unauthorized signature, 30-1-201.

30-4-208. Security interest of collecting bank in items, accompanying documents, and proceeds. (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of chapter 9 except that:

(a) no security agreement is necessary to make the security interest enforceable (30-9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

History: En. Sec. 4-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-208; amd. Sec. 7, Ch. 402, L. 1983; amd. Sec. 173, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1), after "A", inserted "collecting"; and made minor changes in style.

Cross-References

GENERAL

Holder in due course, 30-3-302.

Taking for value, 30-3-303.

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

When bank gives value for purposes of holder in due course, 30-4-209.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Bank, 30-1-201.
Item, 30-4-104.
Security interest, 30-1-201.
Settlement, 30-4-104.

30-4-209. When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, provided the bank otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course.

History: En. Sec. 4-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-209; amd. Sec. 174, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Cross-References

GENERAL

Taking for value, 30-3-303.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

DEFINITIONAL

Bank, 30-1-201.
Holder in due course, 30-3-302.
Item, 30-4-104.
Security interest, 30-1-201.

30-4-210. Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under 30-3-504 by the close of the bank's next banking day after it knows of the requirement.

(2) If presentment is made by notice and neither payment, acceptance, nor request for compliance with a requirement under 30-3-504 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending it notice of the facts.

History: En. Sec. 4-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-210; amd. Sec. 175, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (1) and (2) substituted "30-3-504" for "30-3-505"; in (2), after "neither", substituted "payment, acceptance" for "honor"; and made minor changes in style.

Cross-References

GENERAL

How presentment made, 30-3-504.

Notice of dishonor, 30-3-508.

Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.

Presentment of "on arrival" drafts, 30-4-502.

DEFINITIONAL

Acceptance, 30-3-410.

Banking day, 30-4-104.

Collecting bank, 30-4-105.

Item, 30-4-104.

Party, 30-1-201.

Presentment, 30-3-504.

Secondary party, 30-3-102.

Send, 30-1-201.

30-4-211. Medium and time of settlement by bank. (1) With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearinghouse rules, and the like or by agreement. In the absence of such prescription:

(a) the medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; and

(b) the time of settlement is:

(i) with respect to tender of settlement by cash, a cashier's check, or a teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to 30-4A-406(1) to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by subsection (1) or the time of settlement is not fixed by subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(3) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(a) presents or forwards the check for collection, settlement is final when the check is finally paid; or

(b) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(4) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

History: En. Sec. 4-211, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-211; amd. Sec. 176, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "Media of remittance — provisional and final settlement in remittance cases. (1) A collecting bank may take in settlement of an item:

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearinghouse or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement:

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline."

Cross-References

GENERAL

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Money, 30-1-201.
Payor bank, 30-4-105.
Person, 30-1-201.
Remitting bank, 30-4-105.
Settle, 30-4-104.

30-4-212. Right of charge-back or refund — liability of collecting bank — return of item. (1) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer, whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer but is liable for any loss resulting from the delay. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsections (3) and (4) of 30-4-211 and subsections (2) and (3) of 30-4-213).

(2) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(3) A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (30-4-301).

(4) The right to charge back is not affected by:

(a) previous use of a credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

History: En. Sec. 4-212, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-212; amd. Sec. 177, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In catchline inserted "liability of collecting bank — return of item"; in (1) inserted second sentence concerning return beyond midnight deadline and at end, in parenthetical, inserted reference to 30-4-211(4); substituted (2) concerning return by collecting bank for former (2) that read: "(2) Within the time and manner prescribed by this section and 30-4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final"; in (6), in two places, substituted "money" for "currency" and after "basis of the" substituted "bank-offered spot rate" for "buying sight rate"; and made minor changes in style.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Money, 30-3-107.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Bank's liability to customer for wrongful dishonor, 30-4-402.

DEFINITIONAL

Account, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Intermediary bank, 30-4-105.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Payor bank, 30-4-105.

Send, 30-1-201.
Settlement, 30-4-104.
Suspension of payment, 30-4-104.

30-4-213. Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement; or

(c) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule, or agreement.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsections (3) and (4) of 30-4-211 and subsection (2) of 30-4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to applicable law stating a time for availability of funds and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(a) if the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(b) if the bank is both the depositary bank and the payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(5) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

History: En. Sec. 4-213, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-213; amd. Sec. 178, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(b), after "without", substituted "having" for "reserving" and after "settlement" deleted "and without having such right"; deleted former (1)(c) that read: "(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith"; in (1)(c) deleted former second sentence that read: "Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item"; in (3), in parenthetical, inserted reference to 30-4-211(4); in (4), after "Subject to", inserted "applicable law stating a time for availability of funds and"; at end of (4)(a) substituted "receive return of the item and the item has not been received within that time" for "learn that the settlement is final"; at beginning of (5) substituted "Subject to applicable law stating a time for availability of funds and" for "A deposit of money in a bank is final when made but, subject to", near middle, after "obligation of the", substituted "depositor" for "customer", and after "deposit" inserted "of money"; and made minor changes in style.

Cross-References

GENERAL

Time of receipt of items, 30-4-107.

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.

Payor bank's responsibility for late return of item, 30-4-302.

When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified, 30-4-303.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Banking day, 30-4-104.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Item, 30-4-104.
Money, 30-1-201.
Notice, 30-1-201.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.
Settlement, 30-4-104.

30-4-214. Insolvency and preference. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsections (3) and (4) of 30-4-211 and subsections (1)(c), (2), and (3) of 30-4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer that is or becomes final, the owner of the item has a preferred claim against the collecting bank.

History: En. Sec. 4-214, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-214; amd. Sec. 179, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In (3), in parenthetical, inserted references to 30-4-211(4) and 30-4-213(1)(c); and made minor changes in style.

Cross-References

Severability, 30-1-108.

Deposits in insolvent banks, 32-1-504.

Order of payment when bank liquidated, 32-1-534.

30-4-215. Presentment warranties. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft:

(a) breach of warranty is a defense to the obligation of the acceptor; and

(b) the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection (2) if the acceptor makes payment with respect to the draft.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under 30-3-405 or 30-3-420 or the drawer is precluded under 30-3-406 or 30-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) This subsection applies if a dishonored draft is presented for payment to the drawer or an indorser or any other item is presented for payment to a party obliged to pay the item and the item is paid. The person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History: En. Sec. 171, Ch. 410, L. 1991.

30-4-216. Encoding and retention warranties. (1) A person that encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(2) A person that undertakes to retain an item pursuant to a truncation agreement warrants to any subsequent collecting bank and to the payor bank

or other payor that retention and presentment of the item comply with the truncation agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach plus expenses and loss of interest incurred as a result of the breach.

History: En. Sec. 172, Ch. 410, L. 1991.

Part 3

Collection of Items — Payor Banks

30-4-301. Deferred posting — recovery of payment by return of items — time of dishonor — return of items by payor bank. (1) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover any settlement if before it has paid the item in cash (subsection (1)(a) of 30-4-213) and before its midnight deadline it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with clearinghouse rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

History: En. Sec. 4-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-301; amd. Sec. 180, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In catchline, at end, inserted "return of items by payor bank"; at beginning of (1) substituted "If a payor bank settles" for "Where an authorized settlement", after "documentary draft" substituted "presented" for "received by a payor bank", after "recover any" substituted "settlement" for "payment", before parenthetical substituted "paid the item in cash" for "made final payment", and in parenthetical inserted reference to subsection (a) of 30-4-213(1); in (1)(b), after "item is", deleted "held for protest or is otherwise"; in (4)(a), after "item", substituted "presented" for "received"; and made minor changes in style.

Cross-References

GENERAL

Notice of dishonor, 30-3-508.

DEFINITIONAL

Banking day, 30-4-104.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Documentary draft, 30-4-104.
Item, 30-4-104.

Midnight deadline, 30-4-104.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.
Send, 30-1-201.
Settlement, 30-4-104.

30-4-302. Payor bank's responsibility for late return of item. (1) If an item is presented to and received by a payor bank the bank is accountable for the amount of:

(a) a demand item, other than a documentary draft, whether properly payable or not if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not settle for or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to subsection (1) is subject to defenses based on breach of a presentment warranty (30-4-215) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

History: En. Sec. 4-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-302; amd. Sec. 75, Ch. 370, L. 1987; amd. Sec. 181, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) deleted "In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of 30-4-207), settlement effected or the like"; inserted (2) concerning liability of payor bank; and made minor changes in style.

Cross-References

DEFINITIONAL

Acceptance, 30-3-410.
Banking day, 30-4-104.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Properly payable, 30-4-104.
Settle, 30-4-104.

30-4-303. When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified. (1) Any knowledge, notice, or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend, or modify such right or duty if the knowledge, notice, stop order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(a) the bank accepts or certifies the item;

(b) the bank pays the item in cash;

(c) the bank settles for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement;

(d) the bank becomes accountable for the amount of the item under 30-4-302 dealing with the payor bank's responsibility for late return of items; or

(e) with respect to checks, a cutoff hour no earlier than 1 hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

History: **En. Sec. 4-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-303; amd. Sec. 182, Ch. 410, L. 1991.**

Compiler's Comments

1991 Amendment: At end of (1), before "of the following", substituted "earliest" for "bank has done any"; in (1)(c), after "without", substituted "having" for "reserving" and after "settlement" deleted "and without having such right"; deleted former (1)(d) that read: "(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item"; in middle of (1)(d), after "under", deleted "subsection (1)(d) of 30-4-213 and"; inserted (1)(e) concerning cutoff hour for checks; at end of (2) deleted "convenient to the bank"; and made minor changes in style.

Cross-References

GENERAL

Definition and operation of acceptance, 30-3-410.

Customer's right to stop payment — burden of proof of loss, 30-4-403.

Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Acceptance, 30-3-410.
Account, 30-4-104.
Agreement, 30-1-201.
Clearinghouse, 30-4-104.
Customer, 30-4-104.
Item, 30-4-104.
Notice, 30-1-201.
Payor bank, 30-4-105.
Settle, 30-4-104.

Part 4

Relationship Between Payor Bank and Its Customer

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

30-4-401. When bank may charge customer's account. (1) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and the bank.

(2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice will be effective for the period stated in 30-4-403(2) for stop orders and must be received at a time and in a manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the check described in 30-4-303. If a bank charges against the account of a customer a

check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items pursuant to 30-4-402.

(4) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) the original terms of the altered item; or

(b) the terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

History: En. Sec. 4-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-401; amd. Sec. 183, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Inserted second sentence of (1) concerning authorization by customer in accordance with agreement with bank; inserted (2) concerning nonliability for overdraft; inserted (3) concerning notice of postdating; in (4)(a) and (4)(b) substituted "terms" for "tenor"; and made minor changes in style.

Cross-References

GENERAL

Incomplete instruments, 30-3-115.

Alteration, 30-3-407.

Customer's duty to discover and report unauthorized signature or alteration, 30-4-406.

Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Account, 30-4-104.

Bank, 30-1-201.

Customer, 30-4-104.

Good faith, 30-1-201.

Holder, 30-1-201.

Item, 30-4-104.

Properly payable, 30-4-104.

30-4-402. Bank's liability to customer for wrongful dishonor — time of determining insufficiency of account. (1) Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one such determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

History: En. Sec. 4-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-402; amd. Sec. 184, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: At end of catchline inserted "time of determining insufficiency of account"; inserted (1) concerning wrongful dishonor of item; in (2), at beginning of second sentence, deleted "When the dishonor occurs through mistake" and in second sentence, after "proved", deleted "If so proximately caused and proved damages"; inserted (3) concerning decision to dishonor based upon bank's determination of account balance; and made minor changes in style.

Cross-References

GENERAL

Breach of obligation to pay money, 27-1-312.

Liability for negligence as well as willful acts, 27-1-701.

Mistakes of fact or law, 28-2-408 through 28-2-410.

DEFINITIONAL

Bank, 30-1-201.
Customer, 30-4-104.
Item, 30-4-104.

30-4-403. Customer's right to stop payment — burden of proof of loss. (1) Subject to 27-1-717, a customer or any person authorized to draw on the account if there is more than one may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty and received by the bank at a time and in a manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in 30-4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(2) A stop order is effective for 6 months after the time it is received, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop order may be renewed for additional 6-month periods by a writing given to the bank within a period during which the stop order is effective.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order or order to close an account is on the customer. The loss from payment of an item contrary to a binding stop payment order may include damages for dishonor of subsequent items pursuant to 30-4-402.

History: En. Sec. 4-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-403; amd. Sec. 2, Ch. 557, L. 1985; amd. Sec. 185, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) Subject to 27-1-717, a customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in 30-4-303.

(2) An oral order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period. A written order is effective for only 6 months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer."

Cross-References

GENERAL

Rights of a holder in due course, 30-3-305.

Contract of maker, drawer, and acceptor, 30-3-413.

Payment or satisfaction, 30-3-603.

Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.

Death or incompetence of customer, 30-4-405.

Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Burden of establishing, 30-1-201.
Customer, 30-4-104.
Item, 30-4-104.
Send, 30-1-201.

30-4-404. Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

History: En. Sec. 4-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-404.

Cross-References

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Check, 30-3-104.
Customer, 30-4-104.
Good faith, 30-1-201.
Presentment, 30-3-504.

30-4-405. Death or incompetence of customer. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

History: En. Sec. 4-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-405.

Cross-References

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Check, 30-3-104.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Item, 30-4-104.
Payor bank, 30-4-105.

30-4-406. Customer's duty to discover and report unauthorized signature or alteration. (1) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 7 years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(3) If a bank sends or makes available a statement of account or items pursuant to subsection (1), the customer shall exercise reasonable promptness in examining the statement or the item to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the

statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer has a duty to give prompt notification to the bank of the relevant facts.

(4) If the bank proves that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (3) the customer is precluded from asserting against the bank:

(a) the customer's unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notification from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time in which to examine the item or statement of account and notify the bank. "Reasonable period of time" is presumed to be 14 calendar days after the item or statement pursuant to subsection (1) was received by or made available to the customer.

(5) If subsection (4) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (4) does not apply.

(6) Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement or items are made available to the customer (subsection (1)) discover and report the customer's unauthorized signature or any alteration is precluded from asserting against the bank such unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under 30-4-215 with respect to the unauthorized signature or alteration to which the preclusion applies.

History: En. Sec. 4-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-406; amd. Sec. 186, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Substituted current language (see 1991 Session Law for text) for former text that read: "(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank:

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack

of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within 3 years from that time discover and report any unauthorized endorsement is precluded from asserting against the bank such unauthorized signature or endorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim."

Cross-References

GENERAL

Unauthorized signatures, 30-3-404.

Impostors — signature in name of payee, 30-3-405.

Negligence contributing to alteration or unauthorized signature, 30-3-406.

Alteration, 30-3-407.

Warranties on presentment and transfer, 30-3-417.

Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

DEFINITIONAL

Alteration, 30-3-407.
Bank, 30-1-201.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Endorsement, 30-3-204.
Good faith, 30-1-201.
Item, 30-4-104.
Payor bank, 30-4-105.
Send, 30-1-201.
Unauthorized signature, 30-1-201.

30-4-407. Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker, after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(1) of any holder in due course on the item against the drawer or maker; and

(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

History: En. Sec. 4-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-407; amd. Sec. 187, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: In introductory clause, after "maker", inserted "after an account has been closed"; and made minor change in style.

Cross-References

GENERAL

Customer's right to stop payment — burden of proof of loss, 30-4-403.

DEFINITIONAL

Holder, 30-1-201.
Holder in due course, 30-3-302.
Item, 30-4-104.
Payor bank, 30-4-105.

Part 5

Collection of Documentary Drafts

30-4-501. Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

History: En. Sec. 4-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-501.

Cross-References

GENERAL

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.

Responsibility for collection — when action seasonable, 30-4-202.

Effect of instructions, 30-4-203.

Methods of sending and presenting — sending direct to payor bank, 30-4-204.

Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties, 30-4-210.

Availability of credit in portions — presenter's reservation of lien or claim, 30-5-110.

Warranties on transfer and presentment, 30-5-111.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

Indemnities, 30-5-113.

DEFINITIONAL

Documentary draft, 30-4-104, 30-5-103.

30-4-502. Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

History: En. Sec. 4-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-502.

Cross-References

GENERAL

Responsibility for collection — when action seasonable, 30-4-202.

Effect of instructions, 30-4-203.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

DEFINITIONAL

Collecting bank, 30-4-105.

30-4-503. Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need. (1) Unless otherwise instructed and except as provided in chapter 5, a bank presenting a documentary draft:

(a) shall deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize the referee's services, it shall use diligence and good faith to ascertain the reason for dishonor, shall notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and shall request instructions.

(2) The presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

History: En. Sec. 4-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-503; amd. Sec. 188, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Cross-References

GENERAL

When documents deliverable on acceptance — when on payment, 30-2-514.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Letters of credit, Title 30, ch. 5, particularly 30-5-109 through 30-5-114.

DEFINITIONAL

Documentary draft, 30-4-104, 30-5-103.

Presenting bank, 30-4-105.

30-4-504. Privilege of presenting bank to deal with goods — security interest for expenses. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

History: En. Sec. 4-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-504.

Cross-References

GENERAL

Seller's resale including contract for resale, 30-2-706.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Documentary draft, 30-4-104, 30-5-103.

Presenting bank, 30-4-105.

CHAPTER 4A

UNIFORM COMMERCIAL CODE FUNDS TRANSFERS

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Part 1

Subject Matter and Definitions

30-4A-101. Short title. This chapter may be cited as Uniform Commercial Code—Funds Transfers.

History: En. Sec. 189, Ch. 410, L. 1991.

30-4A-102. Subject matter. Except as otherwise provided in 30-4A-108, this chapter applies to funds transfers defined in 30-4A-104.

History: En. Sec. 190, Ch. 410, L. 1991.

30-4A-103. Payment order — definitions. (1) In this chapter, the following definitions apply:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or that otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank.

History: En. Sec. 191, Ch. 410, L. 1991.

30-4A-104. Funds transfer — definitions. In this chapter, the following definitions apply:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means:

(a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank; or

(b) the originator if the originator is a bank.

History: En. Sec. 192, Ch. 410, L. 1991.

30-4A-105. Other definitions. (1) In this chapter, the following definitions apply:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove", with respect to a fact, means to meet the burden of establishing the fact (30-1-201(8)).

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-4A-209.
"Beneficiary". 30-4A-103.
"Beneficiary's bank". 30-4A-103.
"Executed". 30-4A-301.
"Execution date". 30-4A-301.
"Funds transfer". 30-4A-104.
"Funds-transfer system rule". 30-4A-501.
"Intermediary bank". 30-4A-104.
"Originator". 30-4A-104.
"Originator's bank". 30-4A-104.
"Payment by beneficiary's bank to beneficiary". 30-4A-405.
"Payment by originator to beneficiary". 30-4A-406.
"Payment by sender to receiving bank". 30-4A-403.
"Payment date". 30-4A-401.
"Payment order". 30-4A-103.
"Receiving bank". 30-4A-103.
"Security procedure". 30-4A-201.
"Sender". 30-4A-103.

(3) The following definitions in chapter 4 apply to this chapter:

"Clearinghouse". 30-4-104.

"Item". 30-4-104.

"Suspends payments". 30-4-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 193, Ch. 410, L. 1991.

30-4A-106. Time payment order is received. (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in 30-1-201(27). A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this chapter refers to an execution date or payment date or state a day on which a receiving bank is required to take action and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

History: En. Sec. 194, Ch. 410, L. 1991.

30-4A-107. Federal reserve regulations and operating circulars. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

History: En. Sec. 195, Ch. 410, L. 1991.

30-4A-108. Exclusion of consumer transactions governed by federal law. This chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.) as amended from time to time.

History: En. Sec. 196, Ch. 410, L. 1991.

Part 2

Issue and Acceptance of Payment Order

30-4A-201. Security procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer or detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

History: En. Sec. 197, Ch. 410, L. 1991.

30-4A-202. Authorized and verified payment orders. (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders and the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is considered to be commercially reasonable if:

(a) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer; and

(b) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in the customer's name and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term "sender" in this chapter includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) or if it is effective as the order of the customer under subsection (2).

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and in 30-4A-203(1)(a), rights and obligations arising under this section or 30-4A-203 may not be varied by agreement.

History: En. Sec. 198, Ch. 410, L. 1991.

30-4A-203. Unenforceability of certain verified payment orders. (1) If an accepted payment order is not, under 30-4A-202(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to 30-4A-202(2), the following rules apply:

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) (i) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person:

(A) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure; or

(B) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault.

(ii) Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders.

History: En. Sec. 199, Ch. 410, L. 1991.

30-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order. (1) If a receiving bank accepts a payment order issued in the name of its customer as sender that is not authorized and not effective as the order of the customer under 30-4A-202 or not enforceable, in whole or in part, against the customer under 30-4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) may be fixed by agreement as stated in 30-1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

History: En. Sec. 200, Ch. 410, L. 1991.

30-4A-205. Erroneous payment orders. (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order erroneously instructed payment to a beneficiary not intended by the sender, erroneously instructed payment in an amount greater than the amount intended by the sender, or was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(a) If the sender proves that the sender or a person acting on behalf of the sender pursuant to 30-4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in subsections (1)(b) and (1)(c).

(b) Except as provided in subsection (1)(c), if the funds transfer is completed on the basis of an erroneous payment order described in subsection (1), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(c) If the funds transfer is completed on the basis of a payment order erroneously instructing payment in an amount greater than the amount intended by the sender, as described in subsection (1), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If the sender of an erroneous payment order described in subsection (1) is not obliged to pay all or part of the order and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders.

History: En. Sec. 201, Ch. 410, L. 1991.

30-4A-206. Transmission of payment order through funds-transfer or other communication system. (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is considered to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

History: En. Sec. 202, Ch. 410, L. 1991.

30-4A-207. Misdescription of beneficiary. (1) Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If a payment order described in subsection (2) is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a), the following rules apply:

(a) If the originator is a bank, the originator is obliged to pay its order.

(b) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

History: En. Sec. 203, Ch. 410, L. 1991.

30-4A-208. Misdescription of intermediary bank or beneficiary's bank. (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number as follows:

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank, both by name and an identifying number, if the name and number identify different persons as follows:

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in 30-4A-302(1)(a).

History: En. Sec. 204, Ch. 410, L. 1991.

30-4A-209. Acceptance of payment order. (1) Subject to subsection (4), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4), a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) when the bank:

(i) pays the beneficiary as stated in 30-4A-405(1) or (2); or

(ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) when the bank receives payment of the entire amount of the sender's order pursuant to 30-4A-403(1)(a) or (1)(b); or

(c) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or if the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within 1 hour after that time or 1 hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (2)(c) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank or until the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to 30-4A-211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

History: En. Sec. 205, Ch. 410, L. 1991.

30-4A-210. Rejection of payment order. (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order:

(a) any means complying with the agreement is reasonable; and

(b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date

to the earlier of the day the order is canceled pursuant to 30-4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are considered rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

History: En. Sec. 206, Ch. 410, L. 1991.

30-4A-211. Cancellation and amendment of payment order. (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank as follows:

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) (i) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order or because of a mistake by a sender in the funds transfer that resulted in the issuance of a payment order:

(A) that is a duplicate of a payment order previously issued by the sender;

(B) that orders payment to a beneficiary not entitled to receive payment from the originator; or

(C) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator.

(ii) If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is consid-

ered to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b).

History: En. Sec. 207, Ch. 410, L. 1991.

30-4A-212. Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this chapter but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action or refrain from taking action with respect to the order except as provided in this chapter or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in 30-4A-209, and liability is limited to that provided in this chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this chapter or by express agreement.

History: En. Sec. 208, Ch. 410, L. 1991.

Part 3

Execution of Sender's Payment Order by Receiving Bank

30-4A-301. Execution and execution date. (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank may be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

History: **En. Sec. 209, Ch. 410, L. 1991.**

30-4A-302. Obligations of receiving bank in execution of payment order. (1) Except as provided in subsections (2) through (4), if the receiving bank accepts a payment order pursuant to 30-4A-209(1), the bank has the following obligations in executing the order:

(a) (i) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning:

(A) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer; or

(B) the means by which payment orders are to be transmitted in the funds transfer.

(ii) If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may use any funds-transfer system if use of that system is reasonable in the circumstances and issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender:

(a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges; and

(b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

History: En. Sec. 210, Ch. 410, L. 1991.

30-4A-303. Erroneous execution of payment order. (1) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order or issues a payment order in execution of the sender's order and then issues a duplicate order is entitled to payment of the amount of the sender's order under 30-4A-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under 30-4A-402(3) if that subsection is otherwise satisfied and the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

History: En. Sec. 211, Ch. 410, L. 1991.

30-4A-304. Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in 30-4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under 30-4A-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

History: En. Sec. 212, Ch. 410, L. 1991.

30-4A-305. Liability for late or improper execution or failure to execute payment order. (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of 30-4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of 30-4A-302 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1), resulting from the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank but are not otherwise recoverable.

(5) Reasonable attorney fees are recoverable if demand for compensation under subsection (1) or (2) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) and the agreement does not provide for damages, reasonable attorney fees are recoverable if demand for compensation under subsection (4) is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) may not be varied by agreement.

History: En. Sec. 213, Ch. 410, L. 1991.

Part 4

Payment

30-4A-401. Payment date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

History: En. Sec. 214, Ch. 410, L. 1991.

30-4A-402. Obligation of sender to pay receiving bank. (1) This section is subject to 30-4A-205 and 30-4A-207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to 30-4A-303 and to subsection (5) of this section. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in 30-4A-204 and 30-4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in subsection (3) and an intermediary bank is obliged to refund payment as stated in subsection (4) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in 30-4A-302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4).

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) or to receive refund under subsection (4) may not be varied by agreement.

History: En. Sec. 215, Ch. 410, L. 1991.

30-4A-403. Payment by sender to receiving bank. (1) Payment of the sender's obligation under 30-4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender credited an account of the receiving bank with the sender or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving

bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under 30-4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank must be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1), the time when payment of the sender's obligation under 30-4A-402(2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

History: En. Sec. 216, Ch. 410, L. 1991.

30-4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary. (1) Subject to 30-4A-211(5) and 30-4A-405(4) and (5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (1) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

History: En. Sec. 217, Ch. 410, L. 1991.

30-4A-405. Payment by beneficiary's bank to beneficiary. (1) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under 30-4A-404(1) occurs when and to the extent:

(a) the beneficiary is notified of the right to withdraw the credit;

(b) the bank lawfully applies the credit to a debt of the beneficiary; or

(c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under 30-4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) (a) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if:

(i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated;

(ii) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule; and

(iii) the beneficiary's bank did not receive payment of the payment order that it accepted.

(b) If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under 30-4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer:

(a) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance;

(b) the beneficiary's bank is entitled to recover payment from the beneficiary;

(c) no payment by the originator to the beneficiary occurs under 30-4A-406; and

(d) subject to 30-4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under 30-4A-402(3) because the funds transfer has not been completed.

History: En. Sec. 218, Ch. 410, L. 1991.

30-4A-406. Payment by originator to beneficiary — discharge of underlying obligation. (1) Subject to 30-4A-211(5) and 30-4A-405(4) and (5), the originator of a funds transfer pays the beneficiary of the originator's payment order:

(a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer; and

(b) in an amount equal to the amount of the order accepted by the beneficiary's bank but not more than the amount of the originator's order.

(2) (a) If payment under subsection (1) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless:

(i) the payment under subsection (1) was made by a means prohibited by the contract of the beneficiary with respect to the obligation;

(ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment;

(iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary; and

(iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract.

(b) If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under 30-4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is considered to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

History: En. Sec. 219, Ch. 410, L. 1991.

Part 5

Miscellaneous Provisions

30-4A-501. Variation by agreement and effect of funds-transfer system rule. (1) Except as otherwise provided in this chapter, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) (a) "Funds-transfer system rule" means a rule of an association of banks:

(i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders; or

(ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank.

(b) Except as otherwise provided in this chapter, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this chapter and indirectly affects another party to the funds transfer that does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in 30-4A-404(3), 30-4A-405(4), and 30-4A-507(3).

History: En. Sec. 220, Ch. 410, L. 1991.

30-4A-502. Creditor process served on receiving bank — setoff by beneficiary's bank. (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is considered to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

History: **En. Sec. 221, Ch. 410, L. 1991.**

30-4A-503. Injunction or restraining order with respect to funds transfer. (1) For proper cause and in compliance with applicable law, a court may restrain:

(a) a person from issuing a payment order to initiate a funds transfer;

(b) an originator's bank from executing the payment order of the originator; or

(c) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds.

(2) A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

History: **En. Sec. 222, Ch. 410, L. 1991.**

30-4A-504. Order in which items and payment orders may be charged to account — order of withdrawals from account. (1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

History: **En. Sec. 223, Ch. 410, L. 1991.**

30-4A-505. Preclusion of objection to debit of customer's account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within 1 year after the notification was received by the customer.

History: **En. Sec. 224, Ch. 410, L. 1991.**

30-4A-506. Rate of interest. (1) If, under this chapter, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined:

(a) by agreement of the sender and receiving bank; or

(b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1), the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

History: En. Sec. 225, Ch. 410, L. 1991.

30-4A-507. Choice of law. (1) The following rules apply unless the affected parties otherwise agree or subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in subsection (1) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) (a) A funds-transfer system rule may select the law of a particular jurisdiction to govern:

(i) the rights and obligations between participating banks with respect to payment orders transmitted or processed through the system; or

(ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system.

(b) A choice of law made pursuant to subsection (3)(a)(i) is binding on participating banks. A choice of law made pursuant to subsection (3)(a)(ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) and a choice-of-law rule under subsection (3), the agreement under subsection (2) prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

History: En. Sec. 226, Ch. 410, L. 1991.

CHAPTER 5

UNIFORM COMMERCIAL CODE
LETTERS OF CREDIT

Part 1 — Letters of Credit

30-5-101. Short title.
30-5-102. Scope.
30-5-103. Definitions.
30-5-104. Formal requirement — signing.
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30-5-108. "Notation credit" — exhaustion of credit.
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30-5-111. Warranties on transfer and presentment.
30-5-112. Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter".
30-5-113. Indemnities.
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30-5-115. Remedy for improper dishonor or anticipatory repudiation.
30-5-116. Transfer and assignment.
30-5-117. Insolvency of bank holding funds for documentary credit.

Part 1

Letters of Credit

Part Cross-References

Acceptance and issuance of drafts and letters of credit, 32-1-437.

30-5-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

History: En. Sec. 5-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-101.

Cross-References

DEFINITIONAL

Definition and operation of acceptance, 30-3-410.

30-5-102. Scope. (1) This chapter applies:

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this chapter does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This chapter deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this code or may hereafter develop. The fact that this chapter states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this chapter.

History: En. Sec. 5-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-102.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Banks — issuance and acceptance of drafts and letters of credit, 32-1-437.

DEFINITIONAL

Agreement, 30-1-201.
Bank, 30-1-201.
Conspicuous, 30-1-201.
Credit, 30-5-103.
Documentary draft, 30-5-103.
Document of title, 30-1-201.
Draft, 30-3-104.
Honor, 30-1-201.
Person, 30-1-201.

30-5-103. Definitions. (1) In this chapter unless the context otherwise requires:

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this chapter (30-5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Notation of credit". 30-5-108.
"Presenter". 30-5-112(3).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "acceptance". 30-3-410.
"Contract for sale". 30-2-106.
"Draft". 30-3-104.
"Holder in due course". 30-3-302.
"Midnight deadline". 30-4-104.
"Security". 30-8-102.

(4) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 5-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-103.

Cross-References

GENERAL

General provisions, Title 30, ch. 1.

Supplementary general principles of law applicable, 30-1-103.

Course of dealing and usage of trade, 30-1-205.

Sales, Title 30, ch. 2.

"Letter of credit" term — "confirmed credit", 30-2-325.

Commercial paper, Title 30, ch. 3.

Time and effect of establishment of credit, 30-5-106.

Advice of credit — confirmation — error in statement of terms, 30-5-107.

Issuer's obligation to its customer, 30-5-109.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

Secured transactions — sales of accounts and chattel paper, Title 30, ch. 9.

DEFINITIONAL

Agreement, 30-1-201.
Bank, 30-1-201.
Document of title, 30-1-201.
Gives notification, 30-1-201.
Honor, 30-1-201.
Person, 30-1-201.

30-5-104. Formal requirement — signing. (1) Except as otherwise required in subsection (1)(c) of 30-5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

History: En. Sec. 5-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-104.

Cross-References

GENERAL

Supplementary general principles of law applicable, 30-1-103.

Modification, rescission, and waiver, 30-2-209.

DEFINITIONAL

Confirming bank, 30-5-103.
Credit, 30-5-103.
Issuer, 30-5-103.
Signed, 30-1-201.
Telegram, 30-1-201.
Term, 30-1-201.
Writing, 30-1-201.

30-5-105. Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

History: En. Sec. 5-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-105.

Cross-References

DEFINITIONAL

Credit, 30-5-103.
Term, 30-1-201.

30-5-106. Time and effect of establishment of credit. (1) Unless otherwise agreed a credit is established:

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

History: En. Sec. 5-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-106.

Cross-References

GENERAL

"Letter of credit" term — "confirmed credit", 30-2-325.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

DEFINITIONAL

Beneficiary, 30-5-103.
Credit, 30-5-103
Customer, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Issuer, 30-5-103.
Notice, 30-1-201.
Person, 30-1-201.
Receive notice, 30-1-201.
Send, 30-1-201.
Written, 30-1-201.

30-5-107. Advice of credit — confirmation — error in statement of terms. (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

History: En. Sec. 5-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-107.

Cross-References

GENERAL

Issuer's obligation to its customer, 30-5-109.

DEFINITIONAL

Bank, 30-1-201.
Confirming bank, 30-5-103.
Credit, 30-5-103.
Customer, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Issuer, 30-5-103.

30-5-108. "Notation credit" — exhaustion of credit. (1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit:

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding 30 days to obtain such evidence.

(3) If the credit is not a notation credit:

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

History: En. Sec. 5-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-108.

Cross-References

GENERAL

Availability of credit in portions — presenter's reservation of lien or claim, 30-5-110.

DEFINITIONAL

Beneficiary, 30-5-103.
Credit, 30-5-103.
Customer, 30-5-103.
Document, 30-5-103.
Draft, 30-3-104.
Good faith, 30-1-201.
Honor, 30-1-201.
Issuer, 30-5-103.
Person, 30-1-201.
Purchase, 30-1-201.

Purchaser, 30-1-201.
Rights, 30-1-201.
Signed, 30-1-201.

30-5-109. Issuer's obligation to its customer. (1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility:

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A nonbank issuer is not bound by any banking usage of which it has no knowledge.

History: En. Sec. 5-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-109.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Obligation of good faith, 30-1-203.

Course of dealing and usage of trade, 30-1-205.

Advice of credit — confirmation — error in statement of terms, 30-5-107.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

DEFINITIONAL

Bank, 30-1-201.
Beneficiary, 30-1-201.
Branch, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Credit, 30-5-103.
Customer, 30-5-103.
Document, 30-5-103.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Issuer, 30-5-103.
Knowledge, 30-1-201.
Person, 30-1-201.
Term, 30-1-201.

30-5-110. Availability of credit in portions — presenter's reservation of lien or claim. (1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying.

History: En. Sec. 5-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-110.

Cross-References

GENERAL

Performance or acceptance under reservation of rights, 30-1-207.

"Letter of credit" term — "confirmed credit", 30-2-325.

"Notation credit" — exhaustion of credit, 30-5-108.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

DEFINITIONAL

Beneficiary, 30-5-103.
Credit, 30-5-103.

Document, 30-5-103.
Documentary draft, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Person, 30-1-201.

30-5-111. Warranties on transfer and presentment. (1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Chapters 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Chapter 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Chapters 7 and 8.

History: En. Sec. 5-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-111.

Cross-References

GENERAL

Warranties on presentment and transfer, 30-3-417.

Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

Transfer and assignment, 30-5-116.

Warranties on negotiation or transfer of receipt or bill, 30-7-507.

Warranties of collecting bank as to documents, 30-7-508.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

DEFINITIONAL

Advising bank, 30-5-103.
Bank, 30-1-201.
Beneficiary, 30-5-103.
Collecting bank, 30-4-105.
Confirming bank, 30-5-103.
Credit, 30-5-103.
Documentary draft, 30-5-103.
Draft, 30-3-104.
Party, 30-1-201.

30-5-112. Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter". (1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto. Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

History: En. Sec. 5-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-112.

Cross-References

GENERAL

Commercial paper, Title 30, ch. 3.

Bank deposits and collections, Title 30, ch. 4.

Responsibility for collection — when action seasonable, 30-4-202.

Payor bank's responsibility for late return of item, 30-4-302.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Issuer's obligation to its customer, 30-5-109.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Remedy for improper dishonor or anticipatory repudiation, 30-5-115.

DEFINITIONAL

Bank, 30-1-201.

Confirming bank, 30-5-103.

Credit, 30-5-103.

Documentary draft, 30-5-103.

Draft, 30-3-104.

Honor, 30-1-201.

Issuer, 30-5-103.

Send, 30-1-201.

30-5-113. Indemnities. (1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement:

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of 10 business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

History: En. Sec. 5-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-113.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Waiver of buyer's objections by failure to particularize, 30-2-605.

Issuer's obligation to its customer, 30-5-109.

DEFINITIONAL

Bank, 30-1-201.

Credit, 30-5-103.

Customer, 30-5-103.

Documents, 30-5-103.

Honor, 30-1-201.

Midnight deadline, 30-4-104.

Person, 30-1-201.

Send, 30-1-201.

30-5-114. Issuer's duty and privilege to honor — right to reimbursement. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (30-7-507) or of a certificated security (30-8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (30-3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (30-7-502) or a bona fide purchaser of a certificated security (30-8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

History: En. Sec. 5-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-114; amd. Sec. 8, Ch. 402, L. 1983.

Cross-References

GENERAL

Commercial paper, Title 30, ch. 3.

Time and effect of establishment of credit, 30-5-106.

Issuer's obligation to its customer, 30-5-109.

Warranties on transfer and presentment, 30-5-111.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

DEFINITIONAL

Bank, 30-1-201.
Beneficiary, 30-5-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Credit, 30-5-103.
Customer, 30-5-103.
Document, 30-5-103.
Document of title, 30-1-201.
Draft, 30-3-104.
Good faith, 30-1-201.
Holder, 30-1-201.
Honor, 30-1-201.
Issuer, 30-5-103.
Notification, 30-1-201.
Receives notice, 30-1-201.
Security, 30-8-102.
Term, 30-1-201.

30-5-115. Remedy for improper dishonor or anticipatory repudiation. (1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (30-2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under 30-2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under 30-2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

History: En. Sec. 5-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-115.

Cross-References

GENERAL

Retraction of anticipatory repudiation, 30-2-611.

Seller's remedies in general, 30-2-703.

Seller's resale including contract for resale, 30-2-706.

Time and effect of establishment of credit, 30-5-106.

Time allowed for honor or rejection — withholding honor or rejection by consent — "presenter", 30-5-112.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Transfer and assignment, 30-5-116.

DEFINITIONAL

Action, 30-1-201.
Beneficiary, 30-5-103.
Credit, 30-5-103.
Document, 30-5-103.
Draft, 30-3-104.
Issuer, 30-5-103.
Person, 30-1-201.
Rights, 30-1-201.

30-5-116. Transfer and assignment. (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under Chapter 9 on Secured Transactions and is governed by that chapter except that:

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Chapter 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

History: **En. Sec. 5-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-116; amd. Sec. 9, Ch. 402, L. 1983.**

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment, 30-9-318.

DEFINITIONAL

Acceptance, 30-3-410.
Account, 30-9-106.
Beneficiary, 30-5-103.
Credit, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Issuer, 30-5-103.
Receive notification, 30-1-201.

30-5-117. Insolvency of bank holding funds for documentary credit. (1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this chapter is made applicable by paragraphs (a) or (b) of 30-5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

History: En. Sec. 5-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-117.

Cross-References

GENERAL

Insolvency and preference, 30-4-214.

DEFINITIONAL

Advising bank, 30-5-103.
Bank, 30-1-201.
Beneficiary, 30-5-103.
Confirming bank, 30-5-103.
Credit, 30-5-103.
Customer, 30-5-103.
Document, 30-5-103.
Draft, 30-3-104.
Honor, 30-1-201.
Insolvent, 30-1-201.
Issuer, 30-5-103.
Person, 30-1-201.

CHAPTER 6

UNIFORM COMMERCIAL CODE BULK TRANSFERS

Part 1 — Bulk Transfers

30-6-101 through 30-6-111. Repealed.
30-6-112. What constitutes filing — duties of filing officer — information from filing officer.

Chapter Cross-References

GENERAL

Fraudulent conveyances, Title 31, ch. 2, part 3.

Part 1

Bulk Transfers

30-6-101 through 30-6-111. Repealed. Sec. 230, Ch. 410, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

30-6-101. En. Sec. 6-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-101.

30-6-102. En. Sec. 6-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-102.

30-6-103. En. Sec. 6-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-103.

30-6-104. En. Sec. 6-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-104.

30-6-105. En. Sec. 6-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-105.

30-6-106. En. Sec. 6-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-106.

30-6-107. En. Sec. 6-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-107.

30-6-108. En. Sec. 6-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-108.

30-6-109. En. Sec. 6-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-109.

30-6-110. En. Sec. 6-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-110.

30-6-111. En. Sec. 6-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-111.

30-6-112. What constitutes filing — duties of filing officer — information from filing officer. (1) Presentation of a notice or list of claimants for filing and tender of the filing fee or acceptance of the notice or list by the filing officer constitutes filing under this chapter.

(2) The filing officer shall:

(a) mark each notice or list with a file number and with the date and hour of filing;

(b) hold the notice or list or a copy for public inspection;

(c) index the notice or list according to each name given for the seller and for the buyer; and

(d) note in the index the file number and the addresses of the seller and buyer given in the notice or list.

(3) If the person filing a notice or list furnishes the filing officer with a copy, the filing officer upon request shall note upon the copy the file number and date and hour of the filing of the original and send or deliver the copy to the person.

(4) The fee for filing and indexing and for stamping a copy furnished by the person filing to show the date and place of filing is 50 cents for the first page and 25 cents for each additional page. The fee for indexing each name more than two is $2.

(5) Upon request of any person, the filing officer shall issue a certificate showing whether any notice or list with respect to a particular seller or buyer is on file on the date and hour stated in the certificate. If a notice or list is on file, the certificate must give the date and hour of filing of each notice or list and the name and address of each seller, buyer, auctioneer, or liquidator. The fee for the certificate is $2 if the request for the certificate is in the standard form prescribed by the county clerk and recorder and otherwise is $5. Upon request of any person, the filing officer shall furnish a copy of any filed notice or list for a fee of 50 cents.

(6) The filing officer shall keep each notice or list for 2 years after it is filed.

History: En. Sec. 227, Ch. 410, L. 1991.

CHAPTER 7

UNIFORM COMMERCIAL CODE — WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

Part 1 — General

30-7-101. Short title.
30-7-102. Definitions and index of definitions.
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Part 1

General

30-7-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Documents of Title.

History: En. Sec. 7-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-101.

30-7-102. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) “Bailee” means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) “Consignee” means the person named in a bill to whom or to whose order the bill promises delivery.

(c) “Consignor” means the person named in a bill as the person from whom the goods have been received for shipment.

(d) “Delivery order” means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) “Document” means document of title as defined in 30-1-201(15).

(f) “Goods” means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) “Issuer” means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) “Warehouseman” is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.

"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Contract for sale". 30-2-106.

"Overseas". 30-2-323.

"Receipt" of goods. 30-2-103.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 7-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-102; amd. Sec. 1, Ch. 137, L. 1979.

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling, 30-7-301.

DEFINITIONAL

Bill of lading, 30-1-201.

Contract, 30-1-201.

Contract for sale, 30-2-106.

Delivery, 30-1-201.

Document of title, 30-1-201.

Person, 30-1-201.

Purchase, 30-1-201.

Receipt of goods, 30-2-103.

Right, 30-1-201.

Warehouse receipt, 30-1-201.

Written, 30-1-201.

30-7-103. Relation of chapter to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto.

History: En. Sec. 7-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-103.

Cross-References

Laws not repealed, 30-1-111.

Who may issue a warehouse receipt — storage under government bond, 30-7-201.

Form of warehouse receipt — essential terms — optional terms, 30-7-202.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Termination of storage at warehouseman's option, 30-7-206.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

30-7-104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

History: En. Sec. 7-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-104.

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bearer, 30-1-201.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Overseas, 30-2-323.
Person, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-105. Construction against negative implication. The omission from either Part 2 or Part 3 of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

History: En. Sec. 7-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-105.

Part 2

Warehouse Receipts — Special Provisions

Part Cross-References

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

Applicability of U.C.C. to law of deposits for hire, 70-6-401.

Applicability of U.C.C. to common carriers, merchants, and warehousemen, 70-9-401.

30-7-201. Who may issue a warehouse receipt — storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

History: En. Sec. 7-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-201.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Forgery, 45-6-325.

DEFINITIONAL

Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-202. Form of warehouse receipt — essential terms — optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (30-7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this code and do not impair his obligation of delivery (30-7-403) or his duty of care (30-7-204). Any contrary provisions shall be ineffective.

History: **En. Sec. 7-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-202.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Security interest, 30-1-201.
Term, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

30-7-203. Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

History: **En. Sec. 7-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-203.**

Cross-References

GENERAL

Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling, 30-7-301.

Forgery, 45-6-325.

DEFINITIONAL

Conspicuous, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Notice, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Value, 30-1-201.

30-7-204. Duty of care — contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

History: En. Sec. 7-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-204.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Bailment — deposit, Title 70, ch. 6.

DEFINITIONAL

Action, 30-1-201.
Agreed, 30-1-201.
Goods, 30-7-102.
Reasonable time, 30-1-204.
Sign, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

30-7-205. Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

History: En. Sec. 7-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-205.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Document of title to goods defeated in certain cases, 30-7-503.

Protection of buyers of goods, 30-9-307.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.
Delivery, 30-1-201.
Duly negotiate, 30-7-501.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-206. Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (30-7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

History: En. Sec. 7-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-206.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Penalty for delivering goods without obtaining possession of outstanding negotiable receipt, 30-7-705.

DEFINITIONAL

Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Notice, 30-1-201.
Person, 30-1-201.
Reasonable time, 30-1-204.
Value, 30-1-201.
Warehouseman, 30-7-102.

30-7-207. Goods must be kept separate — fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

History: En. Sec. 7-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-207.

Cross-References

GENERAL

Title under warehouse receipt defeated in certain cases, 30-7-205.

DEFINITIONAL

Delivery, 30-1-201.
Duly negotiate, 30-7-501.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-208. Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

History: En. Sec. 7-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-208.

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

DEFINITIONAL

Issuer, 30-7-102.
Notice, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-209. Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Chapter on Secured Transactions (Chapter 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under 30-7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History: En. Sec. 7-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-209.

Cross-References

GENERAL

Manner of seller's tender of delivery, 30-2-503.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Policy and subject matter of chapter, 30-9-102.

Priority of certain liens arising by operation of law, 30-9-310.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Liens generally, Title 71, ch. 3, part 1.

DEFINITIONAL

Deliver, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Money, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Right, 30-1-201.
Security interest, 30-1-201.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-210. Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History: En. Sec. 7-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-210; amd. Sec. 2, Ch. 137, L. 1979.

Cross-References

GENERAL

Obligation of warehousemen or carrier to deliver — excuse, 30-7-403.

Penalty for delivering goods without obtaining possession of outstanding negotiable receipt, 30-7-705.

Liens generally, Title 71, ch. 3, part 1.

DEFINITIONAL

Bill of lading, 30-1-201.
Conspicuous, 30-1-201.
Creditor, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Notifies, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Warehouseman, 30-7-102.

Part 3

Bills of Lading — Special Provisions

Part Cross-References

Carrier's contract — applicability of U.C.C., 69-11-105.

30-7-301. Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling. (1) A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

History: En. Sec. 7-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-301.

Cross-References

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

Forgery, 45-6-325.

Issuance of bills of lading by railroad station agents — penalty, 69-14-215.

DEFINITIONAL

Bill of lading, 30-1-201.
Consignee, 30-7-102.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Notice, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Value, 30-1-201.

30-7-302. Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

History: En. Sec. 7-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-302.

Cross-References

GENERAL

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

DEFINITIONAL

Agreement, 30-1-201.
Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Issuer, 30-7-102.
Overseas, 30-2-323.
Party, 30-1-201.
Person, 30-1-201.

30-7-303. Diversion — reconsignment — change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) the holder of a negotiable bill; or

(b) the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

History: En. Sec. 7-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-303.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery, 30-7-504.

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Consignee, 30-7-102.
Consignor, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Term, 30-1-201.

30-7-304. Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this chapter against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

History: En. Sec. 7-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-304.

Cross-References

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Overseas, 30-2-323.
Person, 30-1-201.
Receipt of goods, 30-2-103.

30-7-305. Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

History: En. Sec. 7-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-305.

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.
Consignor, 30-7-102.
Goods, 30-7-102.
Issuer, 30-7-102.
Receipt of goods, 30-2-103.

30-7-306. Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

History: En. Sec. 7-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-306.

Cross-References

DEFINITIONAL

Bill of lading, 30-1-201.
Issuer, 30-7-102.

30-7-307. Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History: En. Sec. 7-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-307.

Cross-References

GENERAL

Lien of warehouseman, 30-7-209.

Policy and subject matter of chapter, 30-9-102.

Priority of certain liens arising by operation of law, 30-9-310.

Holder of lien not entitled to compensation, 71-3-112.

DEFINITIONAL

Bill of lading, 30-1-201.
Consignor, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

30-7-308. Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of 30-7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History: En. Sec. 7-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-308.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Bill of lading, 30-1-201.
Creditor, 30-1-201.
Delivery, 30-1-201.
Good faith, 30-1-201.
Goods, 30-7-102.
Notifies, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.

30-7-309. Duty of care — contractual limitation of carrier's liability. (1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

History: **En. Sec. 7-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-309.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Railroads, notice of injury to transported livestock, 69-14-216.

DEFINITIONAL

Action, 30-1-201.
Bill of lading, 30-1-201.
Consignor, 30-7-102.
Document, 30-7-102.

Goods, 30-7-102.
Value, 30-1-201.

Part 4

Warehouse Receipts and Bills of Lading — General Obligations

30-7-401. Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

(a) the document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

History: **En. Sec. 7-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-401.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Liability for nonreceipt or misdescription, 30-7-203.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Liability for nonreceipt or misdescription —"said to contain" — "shippers load and count" — improper handling, 30-7-301.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

DEFINITIONAL

Bailee, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

30-7-402. Duplicate receipt or bill — overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

History: **En. Sec. 7-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-402.**

Cross-References

GENERAL

Goods must be kept separate — fungible goods, 30-7-207.

Bills of lading in a set, 30-7-304.

Document of title to goods defeated in certain cases, 30-7-503.

Lost and missing documents, 30-7-601.

Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate", 30-7-703.

Forgery, 45-6-325.

DEFINITIONAL
Bill of lading, 30-1-201.
Conspicuous, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Right, 30-1-201.

30-7-403. Obligation of warehouseman or carrier to deliver — excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Chapter on Sales (30-2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this chapter (30-7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under 30-7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.

History: En. Sec. 7-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-403.

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Rights acquired by due negotiation, 30-7-502.

Delivery of freight, 69-11-404.

DEFINITIONAL
Bailee, 30-7-102.
Conspicuous, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Goods, 30-7-102.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Right, 30-1-201.
Terms, 30-1-201.
Warehouseman, 30-7-102.
Written, 30-1-201.

30-7-404. No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

History: En. Sec. 7-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-404.

Cross-References

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Document of title, 30-1-201.
Good faith, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Term, 30-1-201.

Part 5

Warehouse Receipts and Bills of Lading

Negotiation and Transfer

Part Cross-References

Issuance of bills of lading by railroad station agents, 69-14-215.

30-7-501. Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title running to the order of a named person is negotiated by his endorsement and delivery. After his endorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Endorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

History: En. Sec. 7-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-501.

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

Document of title to goods defeated in certain cases, 30-7-503.

Protection of purchasers of instruments and documents, 30-9-309.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Good faith, 30-1-201.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.

30-7-502. Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of 30-7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

History: **En. Sec. 7-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-502.**

Cross-References

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Delivery order, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Fungible, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Person, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-503. Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (30-7-403) or with power of disposition under this code (30-2-403 and 30-9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

History: En. Sec. 7-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-503.

Cross-References

GENERAL

Title under warehouse receipt defeated in certain cases, 30-7-205.

Duplicate receipt or bill — overissue, 30-7-402.

No liability for good faith delivery pursuant to receipt or bill, 30-7-404.

Form of negotiation and requirements of "due negotiation", 30-7-501.

Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery, 30-7-504.

Protection of purchasers of instruments, documents, and securities, 30-9-309.

DEFINITIONAL

Bill of lading, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Delivery order, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Goods, 30-7-102.
Person, 30-1-201.
Right, 30-1-201.
Warehouse receipt, 30-1-201.

30-7-504. Rights acquired in the absence of due negotiation — effect of diversion — seller's stoppage of delivery. (1) A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under 30-2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a nonnegotiable document may be stopped by a seller under 30-2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

History: En. Sec. 7-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-504.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Diversion — reconsignment — change of instructions, 30-7-303.

Obligation of carrier or warehouseman to deliver, 30-7-403.

Delivery without endorsement — right to compel endorsement, 30-7-506.

DEFINITIONAL

Bailee, 30-7-102.

Bill of lading, 30-1-201.

Buyer in ordinary course of business, 30-1-201.

Consignee, 30-7-102.

Consignor, 30-7-102.

Creditor, 30-1-201.

Delivery, 30-1-201.

Document, 30-7-102.

Duly negotiate, 30-7-501.

Good faith, 30-1-201.

Goods, 30-7-102.

Honor, 30-1-201.

Notification, 30-1-201.

Purchaser, 30-1-201.

Rights, 30-1-201.

30-7-505. Endorser not a guarantor for other parties. The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

History: En. Sec. 7-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-505.

Cross-References

GENERAL

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bailee, 30-7-102.

Document of title, 30-1-201.

Party, 30-1-201.

30-7-506. Delivery without endorsement — right to compel endorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

History: En. Sec. 7-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-506.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

Form of negotiation and requirements of "due negotiation", 30-7-501.

Endorser not a guarantor for other parties, 30-7-505.

DEFINITIONAL

Document of title, 30-1-201.

Rights, 30-1-201.

30-7-507. Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

History: En. Sec. 7-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-507.

Cross-References

GENERAL

Warranty of title and against infringement — buyer's obligation against infringement, 30-2-312.

Express warranties by affirmation, promise, description, sample, 30-2-313.

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Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Warranties of collecting bank as to documents, 30-7-508.

DEFINITIONAL

Document, 30-7-102.
Document of title, 30-1-201.
Genuine, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

30-7-508. Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

History: En. Sec. 7-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-508.

Cross-References

GENERAL

Effect of instructions, 30-4-203.

Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.

Presentment of "on arrival" drafts, 30-4-502.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Warranties on negotiation or transfer of receipt or bill, 30-7-507.

DEFINITIONAL

Collecting bank, 30-4-105.
Delivery, 30-1-201.
Document, 30-7-102.
Draft, 30-5-103.
Good faith, 30-1-201.

30-7-509. Receipt or bill — when adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Chapters on Sales (Chapter 2) and on Letters of Credit (Chapter 5).

History: En. Sec. 7-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-509.

Cross-References

DEFINITIONAL

Contract for sale, 30-2-106.
Document, 30-7-102.

Part 6

Warehouse Receipts and Bills of Lading Miscellaneous Provisions

30-7-601. Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within 1 year after delivery.

History: En. Sec. 7-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-601.

Cross-References

GENERAL

Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate", 30-7-703.

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-7-201.

30-7-602. Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

History: En. Sec. 7-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-602.

Cross-References

GENERAL

Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Value, 30-1-201.

30-7-603. Conflicting claims — interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

History: En. Sec. 7-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-603.

Cross-References

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Action, 30-1-201.
Bailee, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Reasonable time, 30-1-204.

Part 7

Penalties

30-7-701. Penalty for issuing receipt when goods have not been delivered. A warehouseman or any officer, agent, or servant of a warehouseman who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding $5,000 or by both.

History: En. Sec. 50, Ch. 154, L. 1917; re-en. Sec. 4128, R.C.M. 1921; re-en. Sec. 4128, R.C.M.1935; R.C.M. 1947, 88-150.

30-7-702. Penalty for fraudulently issuing receipt. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 51, Ch. 154, L. 1917; re-en. Sec. 4129, R.C.M. 1921; re-en. Sec. 4129, R.C.M. 1935; R.C.M. 1947, 88-151.

Cross-References

Forgery, 45-6-325.

Grain storage — fraudulent receipt, 80-4-428.

30-7-703. Penalty for issuing duplicate negotiable receipt when original is outstanding without marking the same "duplicate". A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate", except in the case of a lost, stolen, or destroyed receipt after proceedings as provided for in 30-7-601, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding $5,000 or by both.

History: En. Sec. 52, Ch. 154, L. 1917; re-en. Sec. 4130, R.C.M. 1921; re-en. Sec. 4130, R.C.M. 1935; amd. Sec. 11-154, Ch. 264, L. 1963; R.C.M. 1947, 88-152.

Cross-References
Forgery, 45-6-325.

30-7-704. Penalty for issuing negotiable receipt for goods which warehouseman owns. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 53, Ch. 154, L. 1917; re-en. Sec. 4131, R.C.M. 1921; re-en. Sec. 4131, R.C.M. 1935; R.C.M. 1947, 88-153.

Cross-References
Forgery, 45-6-325.

30-7-705. Penalty for delivering goods without obtaining possession of outstanding negotiable receipt. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except where the receipt has been lost, stolen, or destroyed or the goods have been lawfully sold or disposed of to satisfy a warehouseman's lien or because of their perishable or hazardous nature, be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding $1,000 or by both.

History: En. Sec. 54, Ch. 154, L. 1917; re-en. Sec. 4132, R.C.M. 1921; re-en. Sec. 4132, R.C.M. 1935; amd. Sec. 11-155, Ch. 264, L. 1963; R.C.M. 1947, 88-154.

30-7-706. Penalty for negotiating receipt for goods with defective title. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding 1 year or by a fine not exceeding $1,000 or by both.

History: En. Sec. 55, Ch. 154, L. 1917; re-en. Sec. 4133, R.C.M. 1921; re-en. Sec. 4133, R.C.M. 1935; R.C.M. 1947, 88-155.

CHAPTER 8

UNIFORM COMMERCIAL CODE
INVESTMENT SECURITIES

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30-8-320. Transfer or pledge within central depository system.
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30-8-401. Duty of issuer to register transfer, pledge, or release.
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Chapter Cross-References

Registration of public obligations, Title 17, ch. 5, part 11.

Securities regulation, Title 30, ch. 10.

Part 1

Short Title and General Matters

Part Cross-References

Municipal revenue bonds — interim receipts or certificates, 7-7-4435.

Refunding revenue bonds to be fully negotiable, 7-7-4608.

Parking commissions — bonds to be negotiable, 7-14-4661.

30-8-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Investment Securities.

History: En. Sec. 8-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-101.

30-8-102. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) A "certificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:

(i) represented by an instrument issued in bearer or registered form;

(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(b) An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this chapter and not by Title 30, chapter 3, even though it also meets the requirements of that chapter. This chapter does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer or another temporary purpose or payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this chapter.

(d) A certificated security is in "registered form" if:

(i) it specifies a person entitled to the security or to the rights it represents; and

(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.

(e) A certificated security is in "bearer form" if it runs to bearer according to its terms and not by reason of any endorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation:

(a) at least 90% of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of 20% of the capital stock of the corporation and each of which is:

(i) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws;

(ii) a broker, dealer, or investment company registered under the federal securities laws; or

(iii) a national securities exchange or association registered under the federal securities laws; and

(b) any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of such capital stock as is necessary to permit them to qualify as directors.

(4) A "custodian bank" is a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Adverse claim". 30-8-302.
"Bona fide purchaser". 30-8-302.
"Broker". 30-8-303.
"Debtor". 30-9-105.
"Financial intermediary". 30-8-313.
"Guarantee of the signature". 30-8-402.
"Initial transaction statement". 30-8-408.
"Instruction". 30-8-308.
"Intermediary bank". 30-4-105.
"Issuer". 30-8-201.
"Overissue". 30-8-104.

"Secured party". 30-9-105.

"Security agreement". 30-9-105.

(6) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: En. Sec. 8-102, Ch. 264, L. 1963; amd. Sec. 1, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-102; amd. Sec. 10, Ch. 402, L. 1983.

Cross-References

DEFINITIONAL

Bearer, 30-1-201.

Issuer, 30-8-201.

Money, 30-1-201.

Person, 30-1-201.

Rights, 30-1-201.

Term, 30-1-201.

Writing, 30-1-201.

30-8-103. Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(1) the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or

(2) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee.

History: En. Sec. 8-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-103; amd. Sec. 11, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of issuer's restrictions on transfer, 30-8-204.

Lien on future interest, 71-3-105.

DEFINITIONAL

Certificated security, 30-8-102.

Conspicuous, 30-1-201.

Issuer, 30-8-201.

Purchaser, 30-1-201.

Security, 30-8-102.

Uncertificated security, 30-8-102.

30-8-104. Effect of overissue — "overissue". (1) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but if:

(a) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of any certificated security he holds; or

(b) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

History: En. Sec. 8-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-104; amd. Sec. 12, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of unauthorized signature on issue, 30-8-205.

Completion or alteration of certificated security or initial transaction statement, 30-8-206.

Effect of signature of authenticating trustee, registrar, or transfer agent, 30-8-208.

Effect of unauthorized endorsement or instruction, 30-8-311.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Certificated security, 30-8-102.
Issuer, 30-8-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-105. Certificated securities negotiable — statements and instructions not negotiable — presumptions. (1) Certificated securities governed by this chapter are negotiable instruments.

(2) Statements (30-8-408), notices, or the like sent by the issuer of uncertificated securities and instructions (30-8-308) are neither negotiable instruments nor certificated securities.

(3) In any action on a security:

(a) unless specifically denied in the pleading, each signature on a certificated security, in a necessary endorsement, on an initial transaction statement, or on an instruction is admitted;

(b) if the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) if signatures on a certificated security are admitted or established, production of the security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;

(d) if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and

(e) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (30-8-202).

History: En. Sec. 8-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-105; amd. Sec. 13, Ch. 402, L. 1983.

Cross-References

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.

Rights acquired by purchaser, 30-8-301.

DEFINITIONAL

Certificated security, 30-8-102.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-106. Applicability. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

(1) registration of transfer of a certificated security;

(2) registration of transfer, pledge, or release of an uncertificated security; and

(3) sending of statements of uncertificated securities.

History: En. Sec. 8-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-106; amd. Sec. 14, Ch. 402, L. 1983.

Cross-References

GENERAL

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Registration, Title 30, ch. 8, part 4.

Territorial application (securities regulation), 30-10-409.

DEFINITIONAL

Certificated security, 30-8-102.
Issuer, 30-8-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-107. Securities transferable — action for price. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

(2) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

(a) certificated securities accepted by the buyer;

(b) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

History: En. Sec. 8-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-107; amd. Sec. 15, Ch. 402, L. 1983.

Cross-References

GENERAL

Supplementary general principles of law applicable, 30-1-103.

Seller's damages for nonacceptance or repudiation, 30-2-708.

Action for price, 30-2-709.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

Effect of endorsement without delivery, 30-8-309.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

Statute of Frauds, 30-8-319.

DEFINITIONAL

Action, 30-1-201.
Certificated security, 30-8-102.
Contract, 30-1-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-108. Registration of pledge and release of uncertificated securities. A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this chapter are terminated by the registration of release.

History: En. Sec. 16, Ch. 402, L. 1983.

Cross-References

GENERAL

Rights and duties of issuer in respect to registered owners and registered pledgees, 30-8-207.

Enforceability, attachment, perfection and termination of security interests, 30-8-321.

Duty of issuer to register, transfer, pledge, or release, 30-8-401.

DEFINITIONAL

Secured party, 30-9-105.
Security, 30-8-102.
Security interest, 30-1-201.
Uncertificated security, 30-8-102.

Part 2

Issue — Issuer

30-8-201. "Issuer". (1) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(a) places or authorizes the placing of his name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in his property or in an enterprise or to evidence his duty to perform an obligation represented by the certificated security;

(b) creates shares, participations, or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(c) directly or indirectly creates fractional interests in his rights or property, which fractional interests are represented by certificated securities; or

(d) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to 30-8-408.

(3) With respect to registration of transfer, pledge, or release (part 4 of this chapter), "issuer" means a person on whose behalf transfer books are maintained.

History: En. Sec. 8-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-201; amd. Sec. 17, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of unauthorized signature on issue, 30-8-205.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Certificated security, 30-8-102.
Person, 30-1-201.
Rights, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-202. Issuer's responsibility and defenses — notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include:

(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(c) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as provided in the case of certain unauthorized signatures (30-8-205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

History: En. Sec. 8-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-202; amd. Sec. 18, Ch. 402, L. 1983; amd. Sec. 1, Ch. 80, L. 1985.

Cross-References

GENERAL

Issuer's lien, 30-8-103.

Effect of overissue — "overissue", 30-8-104.

Staleness as notice of defects or defenses, 30-8-203.

Effect of issuer's restrictions on transfer, 30-8-204.

Completion or alteration of certificated security or initial transaction statement, 30-8-206.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

DEFINITIONAL

Certificated security, 30-8-102.

Delivery, 30-1-201.

Genuine, 30-1-201.
Issuer, 30-8-201.
Money, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Subsequent purchaser, 30-8-102.
Term, 30-1-201.
Unauthorized signature, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-203. Staleness as notice of defects or defenses. (1) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

(a) the act or event is one requiring the payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities, or any of those on presentation or surrender of the certificated security; the funds or securities are available on the date set for payment or exchange; and he takes the security more than 1 year after that date; and

(b) the act or event is not covered by subsection (1)(a) and he takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

(2) A call that has been revoked is not within subsection (1).

History: En. Sec. 8-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-203; amd. Sec. 19, Ch. 402, L. 1983.

Cross-References

GENERAL

Effect of overissue — "overissue", 30-8-104.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Staleness as notice of adverse claims, 30-8-305.

DEFINITIONAL

Certificated security, 30-8-102.
Delivery, 30-1-201.
Issuer, 30-8-201.
Money, 30-1-201.
Notice, 30-1-201.
Purchaser, 30-1-201.
Right, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-204. Effect of issuer's restrictions on transfer. A restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective against any person without actual knowledge of it unless:

(1) the security is certificated and the restriction is noted conspicuously thereon; or

(2) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee.

History: En. Sec. 8-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-204; amd. Sec. 20, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuer's lien, 30-8-103.
Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Certificated security, 30-8-102.
Conspicuous, 30-1-201.
Issuer, 30-8-201.
Knowledge, 30-1-201.
Person, 30-1-201.

Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-205. Effect of unauthorized signature on certificated security or initial transaction statement. An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security, of similar securities, or of initial transaction statements or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement.

History: En. Sec. 8-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-205; amd. Sec. 21, Ch. 402, L. 1983; amd. Sec. 2, Ch. 80, L. 1985.

Cross-References

GENERAL

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of unauthorized endorsement or instruction, 30-8-311.

Forgery, 45-6-325.

DEFINITIONAL

Certificated security, 30-8-102.
Issuer, 30-8-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Sign, 30-1-201.
Unauthorized signature, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-206. Completion or alteration of certificated security or initial transaction statement. (1) If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete certificated security that has been improperly altered, even though fraudulently, remains enforceable but only according to its original terms.

(3) If an initial transaction statement contains the signatures necessary to its validity but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.

(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.

History: En. Sec. 8-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-206; amd. Sec. 22, Ch. 402, L. 1983.

Cross-References

GENERAL

Effect of overissue — "overissue", 30-8-104.

Effect of unauthorized signature on issue, 30-8-205.

Rights acquired by purchaser, 30-8-301.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Endorsements — instructions, 30-8-308.

Effect of unauthorized endorsement or instruction, 30-8-311.

Forgery, 45-6-325.

DEFINITIONAL

Certificated security, 30-8-102.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Term, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-207. Rights and duties of issuer with respect to registered owners and registered pledgees. (1) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(2) Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4)(b) or by registration of release and pledge under subsection (4)(c), if the security interest is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

History: En. Sec. 8-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-207; amd. Sec. 23, Ch. 402, L. 1983; amd. Sec. 3, Ch. 80, L. 1985.

Cross-References

GENERAL

Registration of pledge and release of uncertificated securities, 30-8-108.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Certificated security, 30-8-102.
Issuer, 30-8-201.
Money, 30-1-201.
Notification, 30-1-201.
Person, 30-1-201.
Registered form, 30-8-102.
Right, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.
Uncertificated security, 30-8-102.

30-8-208. Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect, that:

(a) the certificated security or initial transaction statement is genuine;

(b) his own participation in the issue or registration of the transfer, pledge, or release of the security is within his capacity and within the scope of the authority received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

History: En. Sec. 8-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-208; amd. Sec. 24, Ch. 402, L. 1983.

Cross-References

GENERAL

Proper form of security, 30-8-102.

Effect of unauthorized signature on issue, 30-8-205.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

Duty of authenticating trustee, transfer agent, or registrar, 30-8-406.

DEFINITIONAL

Agreed, 30-1-201.
Certificated security, 30-8-102.
Genuine, 30-1-201.
Issuer, 30-8-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

Part 3

Transfer

30-8-301. Rights acquired by purchaser. (1) Upon transfer of a security to a purchaser (30-8-313), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey unless the purchaser's rights are limited by 30-8-302(4).

(2) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.

History: En. Sec. 8-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-301; amd. Sec. 25, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuance of security, Title 30, ch. 8, part 2.

Transfer or pledge within a central depository system, 30-8-320.

Enforceability, attachment, perfection, and termination of security interests, 30-8-321.

Registration of transfer of security, Title 30, ch. 8, part 4.

Protection of purchasers of instruments and documents, 30-9-309.

DEFINITIONAL

Purchaser, 30-1-201.
Rights, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.

30-8-302. "Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser. (1) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:

(a) who takes delivery of a certificated security in bearer form or registered form, issued or endorsed to him or in blank;

(b) to whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or

(c) to whom a security is transferred under the provisions of subsections (1)(c), (1)(d)(i), or (1)(g) of 30-8-313.

(2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(3) A bona fide purchaser, in addition to acquiring the rights of a purchaser (30-8-301), also acquires his interest in the security free of any adverse claim.

(4) Notwithstanding 30-8-301(1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security or who as a prior holder of that certificated security had notice of an adverse claim cannot improve his position by taking from a bona fide purchaser.

History: En. Sec. 8-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-302; amd. Sec. 26, Ch. 402, L. 1983.

Cross-References

GENERAL

Holder in due course, 30-3-302.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Effect of issuer's restrictions on transfer, 30-8-204 and Official Comment, MCA Annotations.

Rights acquired by purchaser, 30-8-301.

DEFINITIONAL

Bearer form, 30-8-102.
Certificated security, 30-8-102.
Delivery, 30-1-201.
Endorsed, 30-8-308.
Good faith, 30-1-201.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-303. "Broker". "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.

History: En. Sec. 8-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-303; amd. Sec. 27, Ch. 402, L. 1983.

Cross-References

DEFINITIONAL

Person, 30-1-201.
Security, 30-8-102.

30-8-304. Notice to purchaser of adverse claims. (1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:

(a) the security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under 30-8-403(4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee.

(3) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

History: En. Sec. 8-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-304; amd. Sec. 28, Ch. 402, L. 1983.

Cross-References

GENERAL

Effect of overissue — "overissue", 30-8-104.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Staleness as notice of adverse claims, 30-8-305.

Endorsements — instructions, 30-8-308.

Registration, Title 30, ch. 8, part 4.

Issuer's duty as to adverse claims, 30-8-403.

DEFINITIONAL

Adverse claim, 30-8-301.
Bearer form, 30-8-102.
Broker, 30-8-303.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Intermediary bank, 30-4-105.
Issuer, 30-8-201.

Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Writing, 30-1-201.

30-8-305. Staleness as notice of adverse claims. An act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or sets a date on or after which a certificated security is to be presented or surrendered for redemption or exchange does not itself constitute any notice of adverse claims except in the case of a transfer:

(1) after 1 year from any date set for presentment or surrender for redemption or exchange; or

(2) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

History: En. Sec. 8-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-305; amd. Sec. 29, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuer's lien, 30-8-103.

Staleness as notice of defects or defenses, 30-8-203.

Notice to purchaser of adverse claims, 30-8-304.

DEFINITIONAL

Adverse claim, 30-8-301.
Certificated security, 30-8-102.
Money, 30-1-201.
Notice, 30-1-201.
Purchase, 30-1-201.
Right, 30-1-201.
Security, 30-8-102.

30-8-306. Warranties on presentment and transfer of certificated securities — warranties of originators of instructions. (1) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value without notice of adverse claims who receives a new, reissued, or reregistered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (30-8-311) in a necessary endorsement.

(2) A person by transferring a certificated security to a purchaser for value warrants only that:

(a) his transfer is effective and rightful;

(b) the security is genuine and has not been materially altered; and

(c) he knows of no fact which might impair the validity of the security.

(3) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection (3).

(5) A person who originates an instruction warrants to the issuer that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer, he will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing his signature (30-8-312(3)) that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer:

(i) he will be entitled to the registration of transfer, pledge, or release; and

(ii) the transfer, pledge, or release requested in the instructions will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (30-8-312(6)) that:

(a) he is an appropriate person to originate the instruction;

(b) the uncertificated security referred to therein is valid; and

(c) at the time the instruction is presented to the issuer:

(i) the transferor will be entitled to the registration of transfer, pledge, or release;

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and

(iii) the requested transfer, pledge, or release will be rightful.

(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and, at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of subsections (7)(b), (7)(c)(ii), and (7)(c)(iii).

(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(a) his transfer is effective and rightful; and

(b) the uncertificated security is valid.

(10) A broker gives to his customer, the issuer, and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

History: En. Sec. 8-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-306; amd. Sec. 30, Ch. 402, L. 1983.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Issuer's duty and privilege to honor — right to reimbursement, 30-5-114.

Issuer's lien, 30-8-103.

Effect of signature of authenticating trustee, registrar, or transfer agent, 30-8-208.
Rights acquired by purchaser, 30-8-301.
Effect of unauthorized endorsement or instruction, 30-8-311.
Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.
Lost, destroyed, and stolen certificated securities, 30-8-405.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Broker, 30-8-303.
Certificated security, 30-8-102.
Debtor, 30-9-105.
Delivery, 30-1-201.
Endorsement, 30-8-308.
Genuine, 30-1-201.
Good faith, 30-1-201.
Issuer, 30-8-201.
Knowledge, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security, 30-8-102.
Security interest, 30-1-201.
Unauthorized signature, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-307. Effect of delivery without endorsement — right to compel endorsement. If a certificated security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a bona fide purchaser only as of the time the endorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

History: En. Sec. 8-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-307; amd. Sec. 31, Ch. 402, L. 1983.

Cross-References

GENERAL

Delivery without endorsement — right to compel endorsement, 30-7-506.
Securities transferable — action for price, 30-8-107.
Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.
"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.
Endorsements — instructions, 30-8-308.
Effect of endorsement without delivery, 30-8-309.
Purchaser's right to requisites for registration of transfer, pledge, or release on books, 30-8-316.

DEFINITIONAL

Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Delivery, 30-1-201.
Endorsement, 30-8-308.
Purchaser, 30-1-201.
Registered form, 30-8-102.
Right, 30-1-201.

30-8-308. Endorsements — instructions. (1) An endorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or his signature is written without more upon the back of the security.

(2) An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies to whom the security is to be transferred or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.

(3) An endorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

(4) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(5) An instruction originated by an appropriate person is:

(a) a writing signed by an appropriate person; or

(b) a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person. If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(6) "An appropriate person" in subsection (1) means the person specified by the certificated security or by special endorsement to be entitled to the security.

(7) An "appropriate person" in subsection (5) means:

(a) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(b) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7), an "appropriate person" in subsections (1) and (5) includes:

(a) if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;

(b) if the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(c) if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian, or like fiduciary;

(d) if the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;

(e) a person having power to sign under applicable law or controlling instrument; and

(f) to the extent that the person designated or any of the foregoing persons may act through an agent, his authorized agent.

(9) Unless otherwise agreed, the endorser of a certificated security by his endorsement or the originator of an instruction by his origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in 30-8-306.

(10) Whether the person signing is appropriate is determined as of the date of signing, and an endorsement made or an instruction originated by him does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.

(11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer,

pledge, or release, does not render his endorsement or an instruction originated by him unauthorized for the purposes of this chapter.

History: En. Sec. 8-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-308; amd. Sec. 32, Ch. 402, L. 1983.

Cross-References

GENERAL

Rights acquired by purchaser, 30-8-301.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

Effect of delivery without endorsement — right to compel endorsement or instruction, 30-8-307.

Effect of endorsement without delivery, 30-8-309.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Registration, Title 30, ch. 8, part 4.

Assurance that endorsements and instructions are effective, 30-8-402.

Liability and nonliability for registration, 30-8-404.

DEFINITIONAL

Bearer, 30-1-201.
Certificated security, 30-8-102.
Holder, 30-1-201.
Honor, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Writing, 30-1-201.
Written, 30-1-201.

30-8-309. Effect of endorsement without delivery. An endorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificated security.

History: En. Sec. 8-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-309; amd. Sec. 33, Ch. 402, L. 1983; amd. Sec. 4, Ch. 80, L. 1985.

Cross-References

GENERAL

Securities transferable — action for price, 30-8-107.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

DEFINITIONAL

Certificated security, 30-8-102.
Delivery, 30-1-201.
Endorsement, 30-8-308.

30-8-310. Endorsement of certificated security in bearer form. An endorsement of a certificated security in bearer form may give notice of adverse claims (30-8-304) but does not otherwise affect any right to registration the holder possesses.

History: En. Sec. 8-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-310; amd. Sec. 34, Ch. 402, L. 1983.

Cross-References

GENERAL

Endorsements — instructions, 30-8-308.

DEFINITIONAL

Adverse claims, 30-8-301.
Bearer form, 30-8-102.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Holder, 30-1-201.
Notice, 30-1-201.
Right, 30-1-201.

30-8-311. Effect of unauthorized endorsement or instruction. Unless the owner or pledgee has ratified an unauthorized endorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(1) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued, or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and

(2) an issuer who registers the transfer of a certificated security upon the unauthorized endorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (30-8-404).

History: En. Sec. 8-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-311; amd. Sec. 35, Ch. 402, L. 1983.

Cross-References

GENERAL

Effect of overissue — "overissue", 30-8-104.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Adverse claim, 30-8-301.
Certificated security, 30-8-102.
Good faith, 30-1-201.
Issuer, 30-8-201.
Notice, 30-1-201.
Purchaser, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-312. Effect of guaranteeing signature, endorsement, or instruction. (1) Any person guaranteeing a signature of an endorser of a certificated security warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to endorse (30-8-308); and

(c) the signer had legal capacity to sign.

(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to originate the instruction (30-8-308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of such security, as to which fact the signature guarantor makes no warranty;

(c) the signer had legal capacity to sign; and

(d) the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(3) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection (2)) but also warrants that at the time the instruction is presented to the issuer:

(a) the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and

(b) the transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) The guarantor under subsections (1) and (2) or the special guarantor under subsection (3) does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.

(5) Any person guaranteeing an endorsement of a certificated security makes not only the warranties of a signature guarantor under subsection (1) but also warrants the rightfulness of the particular transfer in all respects.

(6) Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection (3) but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

(7) No issuer may require a special guarantee of signature (subsection (3)), a guarantee of endorsement (subsection (5)), or a guarantee of instruction (subsection (6)) as a condition to registration of transfer, pledge, or release.

(8) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to the person for any loss resulting from breach of the warranties.

History: En. Sec. 8-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-312; amd. Sec. 36, Ch. 402, L. 1983.

Cross-References

GENERAL

Certificated securities negotiable — statements and instructions not negotiable — presumptions, 30-8-105.

Registration, Title 30, ch. 8, part 4.

DEFINITIONAL

Appropriate person, 30-8-308.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Genuine, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.
Sign, 30-1-201.
Uncertificated security, 30-8-102.

30-8-313. When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary". (1) Transfer of a security or limited interest (including a security interest) therein to a purchaser occurs only:

(a) at the time he or a person designated by him acquires possession of a certificated security;

(b) at the time the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;

(c) at the time his financial intermediary acquires possession of a certificated security specially endorsed to or issued in the name of the purchaser;

(d) at the time a financial intermediary, not a clearing corporation, sends him confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser:

(i) a specific certificated security in the financial intermediary's possession;

(ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(g) at the time appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under 30-8-320;

(h) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by:

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(i) with respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

(j) with respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under (a), (b), (c), (d), or (g) of subsection (1), at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(2) The purchaser is the owner of a security held for him by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in (c), (d)(i), and (g) of subsection (1). If a security so held is part of a fungible bulk, as in the circumstances specified in (d)(ii) and (d)(iii) of subsection (1), the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certifi-

cated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser the purchaser may demand transfer of an equivalent security as to which no notice of adverse claim has been received.

(4) A "financial intermediary" is a bank, broker, clearing corporation, or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer.

History: En. Sec. 8-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-313; amd. Sec. 37, Ch. 402, L. 1983; amd. Sec. 5, Ch. 80, L. 1985.

Cross-References

GENERAL

Overissue of security, effect of, 30-8-104.

Securities transferable — action for price, 30-8-107.

Rights acquired by purchaser, 30-8-301.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

Effect of unauthorized endorsement or instruction, 30-8-311.

Duty to transfer — when completed, 30-8-314.

Action against transferee based upon wrongful transfer, 30-8-315.

Enforceability, attachment, perfection, and termination of security interests, 30-8-321.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

DEFINITIONAL

Adverse claim, 30-8-301.
Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Clearing corporation, 30-8-102.
Debtor, 30-9-105.
Delivery, 30-1-201.
Endorsement, 30-8-308.
Fungible, 30-1-201.
Holder, 30-1-201.
Notice, 30-1-201.
Notification, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security, 30-8-102.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Signed, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-314. Duty to transfer — when completed. (1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to transfer at the time he:

(i) places a certificated security in the possession of the selling broker or of a person designated by the broker;

(ii) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(iii) if requested causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(iv) places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(b) the selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to transfer at the time he:

(i) places a certificated security in the possession of the buying broker or a person designated by the buying broker;

(ii) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(iii) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(iv) effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until he:

(a) places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for his own account is within subsection (2) and not within subsection (1).

History: En. Sec. 8-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-314; amd. Sec. 38, Ch. 402, L. 1983.

Cross-References

GENERAL

Securities transferable — action for price, 30-8-107.

Broker, 30-8-303.

Warranties on presentment and transfer of certificated securities — warranties of originators of instructions, 30-8-306.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

DEFINITIONAL

Agreement, 30-1-201.
Broker, 30-8-303.
Certificated security, 30-8-102.
Contract, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-315. Action against transferee based upon wrongful transfer. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, as against anyone except a bona fide purchaser, may:

(a) reclaim possession of the certificated security wrongfully transferred;

(b) obtain possession of any new certificated security representing all or part of the same rights;

(c) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

(d) have damages.

(2) If the transfer is wrongful because of an unauthorized endorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security even from a bona fide purchaser if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this chapter on unauthorized endorsements (30-8-311).

(3) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced, the transfer of a certificated or uncertificated security enjoined, and a certificated security impounded pending the litigation.

History: En. Sec. 8-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-315; amd. Sec. 39, Ch. 402, L. 1983.

Cross-References

GENERAL

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

No conversion by good faith conduct, 30-8-318.

DEFINITIONAL

Action, 30-1-201.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Person, 30-1-201.
Right, 30-1-201.
Security, 30-8-102.
Unauthorized endorsement, 30-1-201.
Uncertificated security, 30-8-102.

30-8-316. Purchaser's right to requisites for registration of transfer, pledge, or release on books. Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply his purchaser with any proof of his authority to transfer, pledge, or release or with any other requisite necessary to obtain registration of the transfer, pledge, or release of the security; but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made gives the purchaser the right to reject or rescind the transfer, pledge, or release.

History: En. Sec. 8-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-316; amd. Sec. 40, Ch. 402, L. 1983.

Cross-References

GENERAL

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

DEFINITIONAL

Certificated security, 30-8-102.
Purchaser, 30-1-201.
Reasonable time, 30-1-204.
Right, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-317. Creditor's rights. (1) Subject to the exceptions in subsections (3) and (4), no attachment or levy upon a certificated security or any share or other interest represented thereby which is outstanding is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.

(2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(3) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

(6) A creditor whose debtor is the owner of a security is entitled to aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching the security or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by ordinary legal process.

History: En. Sec. 8-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-317; amd. Sec. 41, Ch. 402, L. 1983.

Cross-References

GENERAL

What property subject to execution, 25-13-501.

Attachment, investment securities and stocks, 27-18-409.

Attachment, corporate stock — service on Secretary of State, 27-18-410.

Issuer's lien, 30-8-103.

DEFINITIONAL

Certificated security, 30-8-102.
Creditor, 30-1-201.
Debtor, 30-9-105.
Issuer, 30-8-201.
Secured party, 30-9-105.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-318. No conversion by good faith conduct. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling, or otherwise dealing with securities) has received certificated securities and sold, pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which he had control according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities.

History: En. Sec. 8-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-318; amd. Sec. 42, Ch. 402, L. 1983.

Cross-References

GENERAL

No liability for good faith delivery pursuant to receipt or bill, 30-7-404.

DEFINITIONAL

Certificated security, 30-8-102.
Delivery, 30-1-201.
Good faith, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-319. Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(2) delivery of a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within 10 days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of the delivery, registration, or payment;

(3) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under subsection (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) the party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price.

History: En. Sec. 8-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-319; amd. Sec. 43, Ch. 402, L. 1983; amd. Sec. 6, Ch. 80, L. 1985.

Cross-References

GENERAL

Statute of Frauds — contracts, 28-2-903.

Statute of Frauds for kinds of personal property not otherwise covered, 30-1-206.

Formal requirements — Statute of Frauds, 30-2-201.

DEFINITIONAL

Action, 30-1-201.
Broker, 30-8-303.
Certificated security, 30-8-102.
Contract, 30-1-201.
Delivery, 30-1-201.
Issuer, 30-8-201.
Party, 30-1-201.
Purchase, 30-1-201.
Reasonable time, 30-1-204.
Security, 30-8-102.
Send, 30-1-201.
Signed, 30-1-201.
Uncertificated security, 30-8-102.
Writing, 30-1-201.

30-8-320. Transfer or pledge within central depository system. (1) In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation, reducing the account of the transferor, pledgor, or pledgee and increasing the account of the transferee, pledgee, or pledgor by the amount of the obligation or the number of shares or rights transferred, pledged, or released if the security is shown on the account of a transferor, pledgor, or pledgee on the books of the clearing corporation and is subject to the control of the clearing corporation; and:

(a) if certificated:

(i) is in the custody of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them; and

(ii) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation, a custodian bank, or a nominee of any of them; or

(b) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.

(2) Under this section entries may be made with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number, or the like and, in appropriate cases, may be on a net basis, taking into account other transfers, pledges, or releases of the same security.

(3) A transfer under this section is effective (30-8-313), and the purchaser acquires the rights of the transferor (30-8-301). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (30-8-321). A transferee or pledgee under this section may be a bona fide purchaser (30-8-302).

(4) A transfer or pledge under this section is not a registration of transfer under part 4.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries or the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

(6) Under this section a clearing corporation shall, upon written request, furnish to any issuer within a reasonable time a list disclosing the names of all persons who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each such security of the issuer on deposit. The clearing corporation may charge the issuer a fee for such written list, but the fee shall bear a reasonable relation to the cost of furnishing such list.

History: En. Sec. 8-320, Ch. 264, L. 1963; amd. Sec. 2, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-320; amd. Sec. 44, Ch. 402, L. 1983.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

"Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser, 30-8-302.

When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary", 30-8-313.

Action against transferee based on wrongful transfer, 30-8-315.

Enforceability, attachment, perfection, and termination of security interests, 30-8-321.

Exempt transactions, 30-10-105.

DEFINITIONAL

Appropriate person, 30-8-308.
Bearer form, 30-8-102.
Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Clearing corporation, 30-8-102.
Custodian bank, 30-8-102.
Endorsement, 30-8-308.
Fungible, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.
Uncertificated security, 30-8-102.
Value, 30-1-201.

30-8-321. Enforceability, attachment, perfection, and termination of security interests. (1) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to a provision of 30-8-313(1).

(2) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a

perfected security interest, but a security interest that has been transferred solely under 30-8-313(1)(i) becomes unperfected after 21 days unless within that time the requirements for transfer under any other provision of 30-8-313(1) are satisfied.

(3) A security interest in a security is subject to the provisions of chapter 9, but no filing is required to perfect the security interest and no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in subsections (1)(h), (1)(i), or (1)(j) of 30-8-313. The secured party has the rights and duties provided under 30-9-207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of 30-8-313(1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after 21 days unless within that time the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of 30-8-313(1).

History: En. Sec. 45, Ch. 402, L. 1983.

Cross-References

GENERAL

When delivery to purchaser occurs — purchaser's broker as holder, 30-8-313.

Enforceability of security interest, 30-9-203.

DEFINITIONAL

Certificated security, 30-8-102.
Debtor, 30-9-105.
Person, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security, 30-8-102.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.
Value, 30-1-201.

Part 4

Registration

30-8-401. Duty of issuer to register transfer, pledge, or release. (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer shall register the transfer, pledge, or release as requested if:

(a) the security is endorsed or the instruction was originated by the appropriate person or persons (30-8-308);

(b) reasonable assurance is given that those endorsements or instructions are genuine and effective (30-8-402);

(c) the issuer has no duty as to adverse claims or has discharged the duty (30-8-403);

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

(2) If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.

History: En. Sec. 8-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-401; amd. Sec. 46, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuer, 30-8-201.

Effect of issuer's restrictions on transfer, 30-8-204.

Rights acquired by purchaser, 30-8-301.

Endorsements — instructions, 30-8-308.

Effect of unauthorized endorsement or instruction, 30-8-311.

Duty of authenticating trustee, transfer agent, or registrar, 30-8-406.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Genuine, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.

30-8-402. Assurance that endorsements and instructions are effective. (1) The issuer may require the following assurance that each necessary endorsement of a certificated security or each instruction (30-8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (30-8-312 (1) or (2)) of the person endorsing a certificated security or originating an instruction, including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;

(b) if the endorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(c) if the endorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) if the endorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 180 days before the date of presentation for transfer, pledge, or release; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection (3)(b), both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.

History: En. Sec. 8-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-402; amd. Sec. 47, Ch. 402, L. 1983.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Effect of unauthorized endorsement or instruction, 30-8-311.

Duty of issuer to register transfer, pledge, or release, 30-8-401.

Issuer's duty as to adverse claims, 30-8-403.

Liability and nonliability for registration, 30-8-404.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Genuine, 30-1-201.
Issuer, 30-8-201.
Person, 30-1-201.
Registered form, 30-8-102.
Security, 30-8-102.

30-8-403. Issuer's duty as to adverse claims. (1) An issuer to whom a certificated security is presented for registration shall inquire into adverse claims if:

(a) a written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued, or reregistered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under 30-8-402(4).

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under 30-8-402(4) or receives notification of an adverse claim under subsection (1) of this section, if a certificated security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.

(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(a) claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(b) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(c) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and

(d) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under 30-8-402(4).

(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:

(a) including a notation of the claim in any statements sent with respect to the security under 30-8-408(3), (6), and (7); and

(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under 30-8-408.

(7) Notwithstanding subsections (4) and (5), if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

(a) the claim was embodied in legal process which expressly provides otherwise;

(b) the claim was asserted in a written notification from the registered pledgee;

(c) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under 30-8-402(4) in connection with the pledgee's request for transfer; or

(d) the transfer requested is to the registered owner.

History: En. Sec. 8-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-403; amd. Sec. 48, Ch. 402, L. 1983.

Cross-References

GENERAL

Obligation of good faith, 30-1-203.

Notice to purchaser of adverse claims, 30-8-304.

Duty of issuer to register transfer, pledge, or release, 30-8-401.

Liability and nonliability for registration, 30-8-404.

Lost, destroyed, and stolen certificated securities, 30-8-405.

Statements of uncertificated securities, 30-8-408.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Certificated security, 30-8-102.
Endorsement, 30-8-308.
Issuer, 30-8-201.
Notice, 30-1-201.
Notification, 30-1-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.
Written, 30-1-201.

30-8-404. Liability and nonliability for registration. (1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

(a) there were on or with a certificated security the necessary endorsements or the issuer had received an instruction originated by an appropriate person (30-8-308); and

(b) the issuer had no duty as to adverse claims or has discharged the duty (30-8-403).

(2) If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand shall deliver a like security to the true owner unless:

(a) the registration was pursuant to subsection (1);

(b) the owner is precluded from asserting any claim for registering the transfer under 30-8-405(1); or

(c) the delivery would result in overissue, in which case the issuer's liability is governed by 30-8-104.

(3) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

(a) the registration was pursuant to subsection (1); or

(b) the registration would result in overissue, in which case the issuer's liability is governed by 30-8-104.

History: **En. Sec. 8-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-404; amd. Sec. 49, Ch. 402, L. 1983.**

Cross-References

GENERAL

Effect of unauthorized endorsement or instruction, 30-8-311.

Assurance that endorsements and instructions are effective, 30-8-402.

Lost, destroyed, and stolen certificated securities, 30-8-405.

Exchangeability of securities, 30-8-407.

DEFINITIONAL

Adverse claim, 30-8-301.
Appropriate person, 30-8-308.
Certificated security, 30-8-102.
Deliver, 30-1-201.
Endorsement, 30-8-308.
Issuer, 30-8-201.
Overissue, 30-8-104.
Party, 30-1-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-405. Lost, destroyed, and stolen certificated securities. (1) If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under 30-8-404 or any claim to a new security under this section.

(2) If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by 30-8-104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

History: **En. Sec. 8-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-405; amd. Sec. 50, Ch. 402, L. 1983; amd. Sec. 7, Ch. 80, L. 1985.**

Cross-References

GENERAL

Effect of unauthorized endorsement or instruction, 30-8-311.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Assurance that endorsements and instructions are effective, 30-8-402.

Issuer's duty as to adverse claims, 30-8-403.

Liability and nonliability for registration, 30-8-404.

Exchangeability of securities, 30-8-407.

DEFINITIONAL

Bona fide purchaser, 30-8-302.
Certificated security, 30-8-102.
Issuer, 30-8-201.
Notice, 30-1-201.
Notify, 30-1-201.
Overissue, 30-8-104.
Person, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-406. Duty of authenticating trustee, transfer agent, or registrar. (1) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities, in the issue of new securities, or in the cancellation of surrendered securities:

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) with regard to the particular functions he performs, he has the same obligation to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar, or other agent is notice to the issuer with respect to the functions performed by the agent.

History: En. Sec. 8-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-406; amd. Sec. 51, Ch. 402, L. 1983.

Cross-References

GENERAL

Rights and duties of issuer with respect to registered owners and registered pledgees, 30-8-207.

Effect of signature of authenticating trustee, registrar, or transfer agent, 30-8-208.

Effect of guaranteeing signature, endorsement, or instruction, 30-8-312.

Duty of issuer to register transfer, pledge, or release, 30-8-401.

Assurance that endorsements and instructions are effective, 30-8-402.

Issuer's duty as to adverse claims, 30-8-403.

Liability and nonliability for registration, 30-8-404.

Lost, destroyed, and stolen certificated securities, 30-8-405.

Exchangeability of securities, 30-8-407.

Statements of uncertificated securities, 30-8-408.

DEFINITIONAL

Certificated security, 30-8-102.
Good faith, 30-1-201.
Holder, 30-1-201.
Issuer, 30-8-201.
Notice, 30-1-201.
Person, 30-1-201.
Security, 30-8-102.
Uncertificated security, 30-8-102.

30-8-407. Exchangeability of securities. (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(2) Upon surrender of a certificated security with all necessary endorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (30-8-403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(3) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(a) the registered owner, if the uncertificated security was not subject to a registered pledge; or

(b) the registered pledgee, if the uncertificated security was subject to a registered pledge.

History: En. Sec. 52, Ch. 402, L. 1983.

Cross-References

GENERAL

Effect of overissue, 30-8-104.

Limited duty of inquiry — security presented to issuer for registration, 30-8-403.

Lost, destroyed and stolen securities, 30-8-405.

DEFINITIONAL

Adverse claim, 30-8-302.

Appropriate person, 30-8-308.

Certificated security, 30-8-102.

Conspicuous, 30-1-201.

Delivery, 30-1-201.

Endorsement, 30-8-308.

Instruction, 30-8-308.

Issuer, 30-8-201.

Person, 30-1-201.

Security, 30-8-102.

Uncertificated security, 30-8-102.

Written, 30-1-201.

30-8-408. Statements of uncertificated securities. (1) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the transfer was registered.

(2) Within 2 business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units pledged;

(c) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the pledge was registered.

(3) Within 2 business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units released from pledge;

(c) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the release was registered.

(4) An "initial transaction statement" is the statement sent to the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1), the registered pledgee pursuant to subsection (2), or the registered owner pursuant to subsection (3). Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement".

(5) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(d) the date the transfer was registered.

(6) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(d) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(7) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the name and address and any taxpayer identification number of the registered pledgee;

(d) the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(8) If the issuer sends the statements described in subsections (6) and (7) at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(9) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security."

History: En. Sec. 53, Ch. 402, L. 1983.

Cross-References

GENERAL

Issuer's lien, 30-8-103.

Securities negotiable — presumptions, 30-8-105.

Issuer's responsibility and defenses — notice of defect or defense, 30-8-202.

Effect of issuer's restrictions on transfer, 30-8-204.

Effect of unauthorized signature on issue, 30-8-205.

Completion or alteration of instrument, 30-8-206.

Right of issuer with respect to registered owners, 30-8-207.

Effect of signature of authenticating trustee, registrar, or transfer agent, 30-8-208.

Notice to purchaser of adverse claims, 30-8-304.

DEFINITIONAL

Adverse claim, 30-8-302.
Conspicuous, 30-1-201.
Delivery, 30-1-201.
Issuer, 30-8-201.
Rights, 30-1-201.
Security, 30-8-102.
Send, 30-1-201.
Signed, 30-1-201.
Uncertificated security, 30-8-102.
Written, 30-1-201.

CHAPTER 9

UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS

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30-9-107. Definitions — "purchase money security interest".
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30-9-202. Title to collateral immaterial.
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30-9-302. When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply.
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30-9-306. "Proceeds" — secured party's rights on disposition of collateral.
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30-9-317. Secured party not obligated on contract of debtor.

30-9-318. Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment.

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30-9-421. Rules for agricultural lien filing — duties — perfection and priority rights.
30-9-422. Repealed.
30-9-423. Filing provisions not to affect department authority as to branded livestock.
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30-9-501. Default — procedure when security agreement covers both real and personal property.
30-9-502. Collection rights of secured party.
30-9-503. Secured party's right to take possession after default.
30-9-504. Secured party's right to dispose of collateral after default — effect of disposition.
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30-9-506. Debtor's right to redeem collateral.
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30-9-508. Foreclosure of security interests in personal property.
30-9-509. Repealed.
30-9-510. Repealed.
30-9-511. Counsel fees on foreclosure.

Chapter Cross-References

Sales, Title 30, ch. 2.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Credit transactions, Title 31, ch. 1.

Debtor and creditor relationships, Title 31, ch. 2.

Related credit practices, Title 31, ch. 3.

Defrauding secured creditors — crime — penalty, 45-6-315.

Financing sales of motor vehicles, Title 61, ch. 4, part 4.

Mortgages, pledges, and liens, Title 71.

Trust code, Title 72, ch. 33 through 36.

Part 1

Short Title, Applicability, and Definitions

30-9-101. Short title. This chapter shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

History: En. Sec. 9-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-101.

30-9-102. Policy and subject matter of chapter. (1) Except as otherwise provided in 30-9-104 on excluded transactions, this chapter applies:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper, or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This chapter applies to security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in 30-9-310.

(3) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

History: En. Sec. 9-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-102; amd. Sec. 54, Ch. 402, L. 1983.

Cross-References

GENERAL

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Sale on approval and sale or return — consignment sales and rights of creditors, 30-2-326.

Applicability of U.C.C. to mortgages, 71-1-112.

DEFINITIONAL

Account, 30-9-106.
Chattel paper, 30-9-105.
Contract, 30-1-201.
Document, 30-9-105.
General intangibles, 30-9-106.
Goods, 30-9-105.
Instrument, 30-9-105.
Security interest, 30-1-201.

30-9-103. Perfection of security interests in multiple state transactions. (1) (a) Subsection (1) applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in subsection (1), perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter considered to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (30-9-307(2)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in (1)(d)(i) and (ii).

(2) (a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in subsection (2), perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in (2)(d), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in (1)(d).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) (a) Subsection (3) applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles,

trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, and commercial harvesting machinery, and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in subsection (3)(c), "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be considered located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act, it shall be considered located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is considered to have been unperfected as against a person who became a purchaser after the change.

(4) The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.

History: En. Sec. 9-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-103; amd. Sec. 55, Ch. 402, L. 1983.

Cross-References

GENERAL

Territorial application of the code — parties' power to choose applicable law, 30-1-105.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Applicable laws (mortgages — general provisions), 71-1-112.

DEFINITIONAL

Accounts, 30-9-106.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Debtor, 30-9-105.
Document, 30-9-105.
Equipment, 30-9-109.
General intangibles, 30-9-106.
Goods, 30-9-105.
Inventory, 30-9-109.
Purchase money security interest, 30-9-107.
Purchaser, 30-1-201.
Security interest, 30-1-201.

30-9-104. Transactions excluded from chapter. This chapter does not apply:

(1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property;

(2) to a landlord's lien;

(3) to a lien given by statute or other rule of law for services or materials except as provided in 30-9-310 on priority of such liens;

(4) to a transfer of a claim for wages, salary, or other compensation of an employee;

(5) to a transfer by a government or governmental subdivision or agency;

(6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract, or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness;

(7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

(8) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral);

(9) to any right of setoff;

(10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder;

(11) to a transfer in whole or in part of any claim arising out of tort; or

(12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312).

History: En. Sec. 9-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-104; amd. Sec. 56, Ch. 402, L. 1983.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Account, 30-9-106.
Chattel paper, 30-9-105.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

30-9-105. Definitions and index of definitions. (1) In this chapter, the following definitions apply unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. When the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

(f) "Document" means document of title as defined in the general definitions of chapter 1 (30-1-201) and a receipt of the kind described in 30-7-201(2).

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(i) "Instrument" means a negotiable instrument (defined in 30-3-104), or a certificated security (defined in 30-8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment.

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.

(l) "Security agreement" means an agreement which creates or provides for a security interest.

(m) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or trolley bus business; the electric or electronics communications transmission business; the transmission of goods by pipeline; or the transmission or the production and transmission of electricity, steam, gas, or water or the provision of sewer service.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.
"Attach". 30-9-203.
"Construction mortgage". 30-9-313(1).
"Consumer goods". 30-9-109(1).
"Equipment". 30-9-109(2).
"Farm products". 30-9-109(3).
"Fixture". 30-9-313(1).
"Fixture filing". 30-9-313.
"General intangibles". 30-9-106.
"Inventory". 30-9-109(4).
"Lien creditor". 30-9-301(3).
"Proceeds". 30-9-306(1).
"Purchase money security interest". 30-9-107.
"United States". 30-9-103.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.
"Contract for sale". 30-2-106.
"Holder in due course". 30-3-302.
"Note". 30-3-104.
"Sale". 30-2-106.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History: **En. Sec. 9-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-105; amd. Sec. 3, Ch. 137, L. 1979; amd. Sec. 57, Ch. 402, L. 1983.**

Cross-References

GENERAL

Terms which include U.C.C. security interests, Title 1, ch. 1, part 2.

Goods to be severed from realty — recording, 30-2-107.

Transactions excluded from chapter, 30-9-104.

Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory", 30-9-109.

Where collateral is not owned by debtor, 30-9-112.

When security interest is perfected — continuity of perfection, 30-9-303.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Document of title, 30-1-201.
General intangibles, 30-9-106.
Holder, 30-1-201.
Money, 30-1-201.
Negotiable instrument, 30-3-104.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.
Writing, 30-1-201.

30-9-106. Definitions — "account" — "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

History: En. Sec. 9-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-106; amd. Sec. 58, Ch. 402, L. 1983.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

Transactions excluded from chapter, 30-9-104.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment, 30-9-318.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Chattel paper, 30-9-105.
Contract, 30-1-201.
Document, 30-9-105.
Goods, 30-9-105.
Instrument, 30-9-105.

30-9-107. Definitions — "purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is:

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

History: En. Sec. 9-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-107.

Cross-References

GENERAL

When after-acquired collateral not security for antecedent debt, 30-9-108.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Person, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

Value, 30-1-201.

30-9-108. When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

History: En. Sec. 9-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-108.

Cross-References

GENERAL

Definitions — "purchase money security interest", 30-9-107.

After-acquired property — future advances, 30-9-204.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Lien on future interest, 71-3-105.

DEFINITIONAL

Collateral, 30-9-105.
Contract, 30-1-201.
Debtor, 30-9-105.
Purchase, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-109. Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory". Goods are:

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk and eggs), including crops growing or to be grown, and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

History: En. Sec. 9-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-109; amd. Sec. 1, Ch. 326, L. 1989.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Contract, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.

Organization, 30-1-201.
Person, 30-1-201.
Sale, 30-2-106.

30-9-110. Sufficiency of description. For the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

History: En. Sec. 9-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-110.

Cross-References

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

30-9-111. Repealed. Sec. 230, Ch. 410, L. 1991.

History: En. Sec. 9-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-111.

30-9-112. Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under 30-9-502(2) or under 30-9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor:

(a) to receive statements under 30-9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under 30-9-505;

(c) to redeem the collateral under 30-9-506;

(d) to obtain injunctive or other relief under 30-9-507(1); and

(e) to recover losses caused to him under 30-9-208(2).

History: En. Sec. 9-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-112.

Cross-References

GENERAL
Default, Title 30, ch. 9, part 5.
Certain contracts void, 71-3-109.
Right to redeem, 71-3-117.

DEFINITIONAL
Collateral, 30-9-105.
Debtor, 30-9-105.
Notice, 30-1-201.
Person, 30-1-201.
Receive notice, 30-1-201.
Right, 30-1-201.
Secured party, 30-9-105.

30-9-113. Security interests arising under chapter on sales or under chapter on leases. A security interest arising solely under the chapter on sales (chapter 2) or the chapter on leases (chapter 2A) is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(1) no security agreement is necessary to make the security interest enforceable;

(2) no filing is required to perfect the security interest; and

(3) the rights of the secured party on default by the debtor are governed:

(a) by the chapter on sales (chapter 2) in the case of a security interest arising solely under that chapter; or

(b) by the chapter on leases (chapter 2A) in the case of a security interest arising solely under that chapter.

History: En. Sec. 9-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-113; amd. Sec. 228, Ch. 410, L. 1991.

Compiler's Comments

1991 Amendment: At end of catchline inserted "or under chapter on leases"; in first sentence of introductory clause, after first parenthetical, inserted "or the chapter on leases (chapter 2A)"; in (3)(a), at end, inserted "in the case of a security interest arising solely under that chapter"; inserted (3)(b) concerning security interests arising under chapter on leases; and made minor changes in style.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Insurable interest in goods — manner of identification of goods, 30-2-501.

Seller's shipment under reservation, 30-2-505.

Rights of financing agency, 30-2-506.

Seller's stoppage of delivery in transit or otherwise, 30-2-705.

Seller's resale including contract for resale, 30-2-706.

Person in the position of a seller, 30-2-707.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Policy and subject matter of chapter, 30-9-102.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Debtor, 30-9-105.
Goods, 30-9-105.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-114. Consignment. (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this chapter by 30-2-326(3)(c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

(a) the consignor complies with the filing provision of the Chapter on Sales with respect to consignments (30-2-326(3)(c)) before the consignee receives possession of the goods;

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor;

(c) the holder of the security interest receives the notification within 5 years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of subsection (1) have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

History: En. Sec. 59, Ch. 402, L. 1983.

Cross-References

GENERAL

Sale on approval and sale or return — consignment sales and rights of creditors, 30-2-326.

Priorities among conflicting security interests — inventory collateral, 30-9-312(2).

DEFINITIONAL

Consignment, 30-1-201(37).
Debtor, 30-9-105.
Goods, 30-9-105.
Notification, 30-1-201 (26).
Proceeds, 30-9-306.
Security interest, 30-1-201(37).

Part 2

Validity of Security Agreement and Rights of Parties Thereto

30-9-201. General validity of security agreement. Except as otherwise provided by this code a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

History: En. Sec. 9-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-201.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Passing of title — reservation for security — limited application of this section, 30-2-401.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Collateral, 30-9-105.
Creditor, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Security agreement, 30-9-105.

30-9-202. Title to collateral immaterial. Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

History: En. Sec. 9-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-202.

Cross-References

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.

Effect of seller's tender — delivery on condition, 30-2-507.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Remedy, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.

30-9-203. Attachment and enforceability of security interest — proceeds, formal requisites. (1) Subject to the provisions of 30-4-208 on the security interest of a collecting bank, 30-8-321 on security interests in securities, and 30-9-113 on a security interest arising under the Chapter on

Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by 30-9-306.

(4) A transaction, although subject to this chapter, is also subject to Title 23, chapter 2, part 5, to Title 23, chapter 2, part 6, to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959, to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301 through 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1, part 4, as amended, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

History: En. Sec. 9-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-203; amd. Sec. 60, Ch. 402, L. 1983; amd. Sec. 2, Ch. 164, L. 1989; amd. Sec. 2, Ch. 165, L. 1989.

Cross-References

GENERAL

Statute of Frauds for kinds of personal property not otherwise covered, 30-1-206.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

Sufficiency of description, 30-9-110.

Security interests arising under chapter on sales, 30-9-113.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

"Proceeds" — secured party's rights and disposition of collateral, 30-9-306.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Party, 30-1-201.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-204. After-acquired property — future advances. (1) Except as provided in subsection (2) a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (30-9-314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (30-9-105(1)).

History: En. Sec. 9-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-204; amd. Sec. 61, Ch. 402, L. 1983.

Cross-References

GENERAL

When after-required collateral not security for antecedent debt, 30-9-108.

Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory", 30-9-109.

Sufficiency of description, 30-9-110.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

Use or disposition of collateral without accounting permissible, 30-9-205.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing required to perfect security interest, 30-9-302.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Lien on future interest, 71-3-105.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Contract, 30-1-201.
Debtor, 30-9-105.
Purchase, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-205. Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle, or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

History: En. Sec. 9-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-205; amd. Sec. 62, Ch. 402, L. 1983.

Cross-References

GENERAL

General validity of security agreement, 30-9-201.

After-acquired property — future advances, 30-9-204.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Priority when goods commingled or processed, 30-9-315.

Secured party not obligated on contract of debtor, 30-9-317.

Defrauding creditors, 45-6-315.

DEFINITIONAL

Account, 30-9-106.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Creditor, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-206. Agreement not to assert defenses against assignee — modification of sales warranties where security agreement exists. (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Chapter on Commercial Paper (Chapter 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Chapter on Sales (Chapter 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

History: En. Sec. 9-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-206.

Cross-References

GENERAL

Scope — certain security and other transactions excluded from chapter 2, 30-2-102.

Exclusion or modification of warranties, 30-2-316.

Rights of a holder in due course, 30-3-305.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

DEFINITIONAL

Agreement, 30-1-201.

Consumer goods, 30-9-109.

Good faith, 30-1-201.

Goods, 30-9-105.

Holder, 30-1-201.

Holder in due course, 30-3-302.

Negotiable instrument, 30-3-104.

Notice, 30-1-201.

Purchase money security interest, 30-9-107.

Sale, 30-2-106.

Security agreement, 30-9-105.

Security interest, 30-1-201.

Value, 30-1-201.

30-9-207. Rights and duties when collateral is in secured party's possession. (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

History: En. Sec. 9-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-207.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Delivery without endorsement — right to compel endorsement, 30-7-506.

Effect of delivery without endorsement — right to compel endorsement, 30-8-307.

Priority when goods are commingled or processed, 30-9-315.

Default, Title 30, ch. 9, part 5.

Defrauding creditors, 45-6-315.

Holder of lien not entitled to compensation, 71-3-112.

DEFINITIONAL

Chattel paper, 30-9-105.
Collateral, 30-9-105.
Debtor, 30-9-105.
Instrument, 30-9-105.
Money, 30-1-201.
Party, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-208. Request for statement of account or list of collateral. (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished.

History: En. Sec. 9-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-208.

Cross-References

GENERAL

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Good faith, 30-1-201.
Know, 30-1-201.
Person, 30-1-201.
Receive, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Written, 30-1-201.

Part 3

Rights of Third Parties — Perfected and Unperfected Security Interests — Rules of Priority

Part Cross-References

Priority of income withholding order for enforcement of child support, 40-5-423.

30-9-301. Persons who take priority over unperfected security interests — right of "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under 30-9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it

secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

History: En. Sec. 9-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-301; amd. Sec. 1, Ch. 406, L. 1979; amd. Sec. 63, Ch. 402, L. 1983; amd. Sec. 1, Ch. 167, L. 1985.

Cross-References

GENERAL

After-acquired property — future advances, 30-9-204.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

When security interest is perfected — continuity of perfection, 30-9-303.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

When possession by secured party perfects security interest without filing, 30-9-305.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Protection of buyers of goods, 30-9-307.

Priority of claims against liquidated bank, 32-1-534.

Priority of income withholding order for enforcement of child support, 40-5-423.

Liens, Title 71, ch. 3.

Possession under a mortgage — how acquired, 81-8-312.

DEFINITIONAL

Account, 30-9-106.

Buyer in ordinary course of business, 30-1-201.

Chattel paper, 30-9-105.

Collateral, 30-9-105.

Creditor, 30-1-201.

Delivery, 30-1-201.

Document, 30-9-105.

General intangibles, 30-9-106.

Goods, 30-9-105.

Instrument, 30-9-105.

Knowledge, 30-1-201.

Person, 30-1-201.

Purchase money security interest, 30-9-107.

Representative, 30-1-201.

Rights, 30-1-201.

Secured party, 30-9-105.

Security interest, 30-1-201.

Value, 30-1-201.

30-9-302. When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 30-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered, and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in 30-9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (30-4-208), in securities (30-8-321), or arising under the Chapter on Sales or covered in subsection (3) of this section;

(g) an assignment for the benefit of all creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (30-9-103(2)).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in 30-9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

History: En. Sec. 9-302, Ch. 264, L. 1963; amd. Sec. 13, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302; amd. Sec. 64, Ch. 402, L. 1983.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Security interests arising under chapter on sales, 30-9-113.

When security interest is perfected — continuity of perfection, 30-9-303.

Protection of buyers of goods, 30-9-307.

Filing, Title 30, ch. 9, part 4.

Motor vehicles, mortgage filed with registrar, 61-3-103.

DEFINITIONAL

Account, 30-9-106.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Creditor, 30-1-201.
Debtor, 30-9-105.
Delivery, 30-1-201.
Document, 30-9-105.
Equipment, 30-9-109.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Instrument, 30-9-105.
Inventory, 30-9-109.
Proceeds, 30-9-306.
Purchase, 30-1-201.
Purchase money security interest, 30-9-107.
Sale, 30-2-106.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-303. When security interest is perfected — continuity of perfection. (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in 30-9-302, 30-9-304, 30-9-305 and 30-9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

History: En. Sec. 9-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-303.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

After-acquired property — future advances, 30-9-204.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Priorities among conflicting interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

DEFINITIONAL

Security interest, 30-1-201.

30-9-304. Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of 30-9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments (other than certificated securities) or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange; but priority between conflicting security interests in the goods is subject to 30-9-312(3); or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this chapter.

History: En. Sec. 9-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-304; amd. Sec. 65, Ch. 402, L. 1983.

Cross-References

GENERAL

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

When security interest is perfected — continuity of perfection, 30-9-303.

When possession by secured party perfects security interest without filing, 30-9-305.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Financing programs of housing — community planning, 90-6-108.

DEFINITIONAL

Chattel paper, 30-9-105.
Debtor, 30-9-105.
Document, 30-9-105.
Goods, 30-9-105.
Instrument, 30-9-105.
Receives notification, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-305. When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subsection 30-5-116(2)(a)), goods, instruments (other than certificated securities), money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

History: En. Sec. 9-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-305; amd. Sec. 66, Ch. 402, L. 1983.

Cross-References

GENERAL

After-acquired property — future advances, 30-9-204.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

When security interest is perfected — continuity of perfection, 30-9-303.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

DEFINITIONAL

Chattel paper, 30-9-105.
Collateral, 30-9-105.
Documents, 30-9-105.
Goods, 30-9-105.
Instruments, 30-9-105.
Receives notification, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-306. "Proceeds" — secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) (a) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(i) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(iii) the security interest in the proceeds is perfected before the expiration of the 10-day period.

(b) Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is:

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of:

(A) the payments to the secured party on account of cash proceeds received by the debtor during such period; and

(B) the cash proceeds received by the debtor during such period to which the secured party is entitled under subsections (4)(a) through (4)(c).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

History: En. Sec. 9-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-306; amd. Sec. 67, Ch. 402, L. 1983.

Cross-References

GENERAL

Course of dealing and usage of trade, 30-1-205.

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

Use or disposition of collateral without accounting permissible, 30-9-205.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Protection of purchasers of instruments, documents, and securities, 30-9-309.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

DEFINITIONAL

Account, 30-9-106.
Bank, 30-1-201.
Chattel paper, 30-9-105.
Check, 30-3-104.
Collateral, 30-9-105.
Creditors, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Insolvency proceedings, 30-1-201.
Money, 30-1-201.
Purchaser, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-307. Protection of buyers of goods. (1) A buyer in ordinary course of business (subsection (9) of 30-1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of $2,500 (other than fixtures, see 30-9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations

unless prior to the purchase the secured party has filed a financing statement covering such goods.

History: En. Sec. 9-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-307.

Cross-References

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.

Document of title to goods defeated in certain cases, 30-7-503.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

"Proceeds" — secured party's rights on disposition of collateral, 30-9-306.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.

Consumer goods, 30-9-109.

Goods, 30-9-105.

Knows and knowledge, 30-1-201.

Person, 30-1-201.

Purchase, 30-1-201.

Secured party, 30-9-105.

Security interest, 30-1-201.

Value, 30-1-201.

30-9-308. Purchase of chattel paper and instruments. A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

(1) which is perfected under 30-9-304 (permissive filing and temporary perfection) or under 30-9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) which is claimed merely as proceeds of inventory subject to a security interest (30-9-306), even though he knows that the specific paper is subject to the security interest.

History: En. Sec. 9-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-308; amd. Sec. 68, Ch. 402, L. 1983.

Cross-References

GENERAL

When possession by secured party perfects security interest without filing, 30-9-305.

DEFINITIONAL

Chattel paper, 30-9-105.

Instrument, 30-9-105.

Inventory, 30-9-109.

Knowledge, 30-1-201.

Proceeds, 30-9-306.

Purchaser, 30-1-201.

Security interest, 30-1-201.

Value, 30-1-201.

30-9-309. Protection of purchasers of instruments, documents, and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to whom a negotiable document of title has been duly negotiated (30-7-501) or a bona fide purchaser of a security (30-8-302), and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

History: En. Sec. 9-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-309; amd. Sec. 69, Ch. 402, L. 1983.

Cross-References

GENERAL

Commercial paper, Title 30, ch. 3.

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Investment securities, Title 30, ch. 8.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Bona fide purchaser, 30-8-302.
Document of title, 30-1-201.
Duly negotiated, 30-7-501.
Holder, 30-1-201.
Holder in due course, 30-3-302, 30-9-105.
Negotiable instrument, 30-3-104.
Notice, 30-1-201.
Purchaser, 30-1-201.
Security, 30-8-102.
Security interest, 30-1-201.

30-9-310. Priority of certain liens arising by operation of law. When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

History: En. Sec. 9-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-310.

Cross-References

GENERAL

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Priorities among conflicting security interests in the same collateral, 30-9-312.

How liens created, 71-3-102.

No lien for claim not due, 71-3-103.

DEFINITIONAL

Goods, 30-9-105.
Person, 30-1-201.
Security interest, 30-1-201.

30-9-311. Alienability of debtor's rights — judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

History: En. Sec. 9-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-311.

Cross-References

GENERAL

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Protection of buyers of goods, 30-9-307.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Rights, 30-1-201.
Sale, 30-2-106.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-312. Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in other sections of this part and in the following sections shall govern where applicable: 30-4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; and 30-9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the

crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(i) before the date of the filing made by the purchase money secured party; or

(ii) before the beginning of the 21-day period if the purchase money security interest is temporarily perfected without filing or possession (30-9-304(5)); and

(c) the holder of the conflicting security interest receives notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under 30-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

History: **En. Sec. 9-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-312; amd. Sec. 2, Ch. 406, L. 1979; amd. Sec. 70, Ch. 402, L. 1983; amd. Sec. 8, Ch. 80, L. 1985; amd. Sec. 2, Ch. 167, L. 1985.**

Cross-References

GENERAL

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

Perfection of security interest in multiple state jurisdictions, 30-9-103.

When after-acquired collateral not security for antecedent debt, 30-9-108.

Consignment, 30-9-114.

When security interest is perfected — continuity of perfection, 30-9-303.

Purchase of chattel paper and instruments, 30-9-308.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Chattel paper, 30-9-105.
Collateral, 30-9-105.
Collecting bank, 30-4-105.
Debtor, 30-9-105.
Documents, 30-9-105.
Give notice, 30-1-201.
Goods, 30-9-105.
Instruments, 30-9-105.
Inventory, 30-9-109.
Knowledge, 30-1-201.
Person, 30-1-201.
Proceeds, 30-9-306.
Purchase money security interest, 30-9-107.
Receives notification, 30-1-201.
Secured party, 30-9-105.
Security, 30-8-102.
Security interest, 30-1-201.
Value, 30-1-201.

30-9-313. Priority of security interests in fixtures. (1) In this section and in the provisions of part 4 of this chapter referring to fixture filing, unless the context otherwise requires:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9-402(5);

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures, but no security interest exists under this chapter in ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of real estate if:

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this chapter; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

History: En. Sec. 9-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-313; amd. Sec. 71, Ch. 402, L. 1983.

Cross-References

GENERAL

Goods to be severed from realty — recording, 30-2-107.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

After-acquired property — future advances, 30-9-204.

Security interest, when perfected, 30-9-303.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Filing, Title 30, ch. 9, part 4.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Contract, 30-1-201.
Creditor, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.

Security interest, 30-1-201.
Value, 30-1-201.
Writing, 30-1-201.

30-9-314. Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to 30-9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsection (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

History: En. Sec. 9-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-314.

Cross-References

GENERAL

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When security interest is perfected — continuity of perfection, 30-9-303.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Priority of security interests in fixtures, 30-9-313.

Default, Title 30, ch. 9, part 5.

DEFINITIONAL

Collateral, 30-9-105.
Creditor, 30-1-201.
Debtor, 30-9-105.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Value, 30-1-201.
Writing, 30-1-201.

30-9-315. Priority when goods are commingled or processed. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under 30-9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

History: En. Sec. 9-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-315.

Cross-References

GENERAL

Attachment and enforceability of security interest — proceeds, formal requisites, 30-9-203.

After-acquired property — future advances, 30-9-204.

When security interest is perfected — continuity of perfection, 30-9-303.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Goods, 30-9-105.

Security interest, 30-1-201.

30-9-316. Priority subject to subordination. Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

History: En. Sec. 9-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-316.

Cross-References

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

Priorities among conflicting security interests in the same collateral, 30-9-312.

DEFINITIONAL

Agreement, 30-1-201.

Person, 30-1-201.

30-9-317. Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

History: En. Sec. 9-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-317.

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

DEFINITIONAL

Collateral, 30-9-105.

Contract, 30-1-201.

Debtor, 30-9-105.

Secured party, 30-9-105.

Security interest, 30-1-201.

30-9-318. Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in 30-9-206 the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

History: En. Sec. 9-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-318; amd. Sec. 72, Ch. 402, L. 1983; amd. Sec. 9, Ch. 80, L. 1985.

Cross-References

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

Transfer and assignment, 30-5-116.

Use or disposition of collateral without accounting permissible, 30-9-205.

Purchase of chattel paper and instruments, 30-9-308.

DEFINITIONAL

Account, 30-9-106.
Account debtor, 30-9-105.
Agreement, 30-1-201.
Contract, 30-1-201.
Good faith, 30-1-201.
Party, 30-1-201.
Receives notification, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Seasonably, 30-1-204.
Term, 30-1-201.

Part 4

Filing

30-9-401. Place of filing — erroneous filing — removal of collateral. (1) Except for financing statements filed pursuant to 30-9-409, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept;

(b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in 30-9-103 determine whether filing is necessary in this state.

(5) For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office if it has more than one place of business.

History: En. Sec. 9-401, Ch. 264, L. 1963; amd. Sec. 15, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-401; amd. Sec. 73, Ch. 402, L. 1983; amd. Sec. 1, Ch. 683, L. 1985.

Cross-References

GENERAL

Fees of county clerk, 7-4-2631.

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession, 30-9-304.

Protection of buyers of goods, 30-9-307.

Priority of security interests in fixtures, 30-9-313.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

Motor vehicles — conditional sales contracts, 61-3-103.

Notice of agricultural lien, 71-3-125.

DEFINITIONAL

Account, 30-9-106.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Debtor, 30-9-105.
Equipment, 30-9-109.
Farm products, 30-9-109.
Financing statement, 30-9-402.
Fixture filing, 30-9-313.
Good faith, 30-1-201.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-402. Formal requisites of financing statement — amendments — mortgage as financing statement. (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address and the county of residence of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. If the financing statement covers timber to be cut, minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or farm products or if the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) ....
Social security number or tax identification number..................................
Address ....
County of residence ....
Name of secured party (or assignee) ....
Address ....

1. This financing statement covers the following types (or items) of property:

(Describe) ....

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) ....

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate) ....
and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is
....

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever is applicable) Signature of Debtor (or Assignor) ....
Signature of Secured Party (or Assignee) ....

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) (a) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(b) A financing statement covering farm products must contain a reasonable description of the real estate upon which the farm products are produced or located. A legal description of the real estate is not required; a statement naming the county or counties in which the farm products are produced or located is sufficient to satisfy this subsection (b).

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

(i) the goods are described in the mortgage by item or type;

(ii) the goods are or are to become fixtures related to the real estate described in the mortgage;

(iii) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(iv) the mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the social security number or tax identification number of the debtor and the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes his name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967; R.C.M. 1947, 87A-9-402; amd. Sec. 74, Ch. 402, L. 1983; amd. Sec. 1, Ch. 619, L. 1987; amd. Sec. 1, Ch. 304, L. 1989; amd. Sec. 2, Ch. 326, L. 1989.

Cross-References

GENERAL

Perfection of security interests in multiple state jurisdictions, 30-9-103.

Sufficiency of description, 30-9-110.

Request for statement of account or list of collateral, 30-9-208.

Alienability of debtor's rights — judicial process, 30-9-311.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

Notice of agricultural lien, 71-3-125.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Goods, 30-9-105.
Party, 30-1-201.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Signed, 30-1-201.

30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system. (1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (1)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1)(b), the filing of the facsimile copy is void.

(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in subsections (6) and (11), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings

are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be set pursuant to subsection (13).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor

and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within 1 working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that he shall establish. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

(11) When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.

(12) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(13) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit

in the general fund in the state treasury all fees he collects. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use.

History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-403; amd. Sec. 75, Ch. 402, L. 1983; amd. Sec. 2, Ch. 119, L. 1985; amd. Sec. 2, Ch. 683, L. 1985; amd. Sec. 2, Ch. 619, L. 1987; amd. Sec. 2, Ch. 185, L. 1989; amd. Sec. 1, Ch. 273, L. 1989; amd. Sec. 3, Ch. 351, L. 1989.

Cross-References

GENERAL

Perfection of security interest in multiple state jurisdictions, 30-9-103.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Priority of security interests in fixtures, 30-9-313.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Assignment of security interest — duties of filing officer — fees, 30-9-405.

Notice of agricultural lien, 71-3-125.

DEFINITIONAL

Debtor, 30-9-105.
Financing statement, 30-9-402.
Fixture, 30-9-313.
Fixture filing, 30-9-313.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-404. Termination statement. (1) If a financing statement covering consumer goods is filed on or after October 1, 1983, then within 1 month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases, whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with 30-9-405(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection or to send such a termination statement within 10 days after proper demand therefor, he shall be liable to the debtor for $100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party, stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state of the financing statement and of any related continuation statement, statement of assignment, and statement of release, he may remove the originals from the files at any time after receipt of the

termination statement. If he has no such record, he may remove them from the files at any time after 1 year after receipt of the termination statement.

(3) The uniform fee for filing and indexing the termination statement shall be set pursuant to 30-9-403.

History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-404; amd. Sec. 76, Ch. 402, L. 1983; amd. Sec. 3, Ch. 185, L. 1989.

Cross-References

GENERAL

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

DEFINITIONAL

Consumer goods, 30-9-109.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Person, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-405. Assignment of security interest — duties of filing officer — fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in 30-9-403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be set pursuant to 30-9-403.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, the name and address of the assignee, and except as provided in 30-9-409(2), containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement or in the case of a fixture filing or a filing covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), he shall index the assignment under the name of the assignor as grantor and to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be set pursuant to 30-9-403. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (30-9-402(6)) may be made only by an assignment of the mortgage in the manner provided by 71-1-207.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

History: **En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971; amd. Sec. 16, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-405; amd. Sec. 77, Ch. 402, L. 1983.**

Cross-References

GENERAL

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Formal requisites of financing statement — amendments mortgage as financing statement, 30-9-402.

Termination statement, 30-9-404.

Release of collateral — duties of filing officer — fees, 30-9-406.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Rights, 30-1-201.
Secured party, 30-9-105.
Signed, 30-1-201.
Written, 30-1-201.

30-9-406. Release of collateral — duties of filing officer — fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released (except as provided in 30-9-409(2)), the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be set pursuant to 30-9-403.

History: **En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971; amd. Sec. 17, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-406; amd. Sec. 78, Ch. 402, L. 1983.**

Cross-References

GENERAL

Termination statement, 30-9-404.

DEFINITIONAL

Collateral, 30-9-105.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Secured party, 30-9-105.
Signed, 30-1-201.

30-9-407. Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and address of each secured party therein. For financing statements recorded on the system described in 30-9-403(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 30-9-403(8).

However, such information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The uniform fee for such a certificate and description of collateral shall be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated thereon, such a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

(4) Within 30 days after July 1, 1987, the secretary of state shall provide a listing of all financing statements recorded on the system described in 30-9-403(9) covering collateral described in 30-9-403(8) to each county clerk and recorder. The secretary of state shall compile the listing alphabetically by debtor's name and may distribute the listing on microfilm or microfiche. The secretary of state shall provide the listing without charge to the county.

(5) The secretary of state shall ensure that the system described in 30-9-403(9) complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that statute read on January 1, 1987. The secretary of state shall distribute portions of the master list to registered buyers at least once each month. He may distribute portions of the master list more frequently if he determines it is necessary to improve the flow of agricultural credit.

History: En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-407; amd. Sec. 79, Ch. 402, L. 1983; amd. Sec. 3, Ch. 683, L. 1985; amd. Sec. 3, Ch. 619, L. 1987.

Cross-References

GENERAL

Fees of county clerk, 7-4-2631.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer, 30-9-403.

DEFINITIONAL

Debtor, 30-9-105.
Financing statement, 30-9-402.
Person, 30-1-201.
Secured party, 30-9-105.
Send, 30-1-201.

30-9-408. Repealed. Sec. 85, Ch. 402, L. 1983.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967; R.C.M. 1947, 87A-9-302.1(a).

30-9-409. Utility financing statement — place of filing — contents — perfection of security interest. (1) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state.

(2) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required.

(3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to subsection (1).

History: **En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967; amd. Sec. 14, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302.2.**

Cross-References

When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply, 30-9-302.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

30-9-410. Continued applicability of laws to transmitting utilities. Unless displaced by the specific provisions of 30-9-409, this code and other applicable laws remain in full force and effect and supplement the provisions of 30-9-409.

History: **En. Sec. 3, Ch. 76, L. 1965; R.C.M. 1947, 87A-9-302.3; amd. Sec. 1, Ch. 101, L. 1985.**

30-9-411. Security agreements and termination statements — when destroyed. Termination statements filed under this chapter shall be retained by the filing officer for a period of 8 years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by this chapter and as to which no termination statement has been filed, shall be retained by the filing officer for a period of 8 years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed.

History: **En. 59-516.1 by Sec. 11-144, Ch. 264, L. 1963; R.C.M. 1947, 59-516.1.**

Cross-References

Termination statement, 30-9-404.

Assignment of security interest — duties of filing officer — fees, 30-9-405.

30-9-412. Financing statements covering consigned or leased goods. A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee", or the like instead of the terms specified in 30-9-402. The provisions of this part shall be applied as appropriate to such a financing statement, but its filing may not of itself be a factor in determining whether or not the consignment or lease is intended as security (30-1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor that attaches to the consigned or leased goods is perfected by such filing.

History: **En. Sec. 80, Ch. 402, L. 1983.**

30-9-413 through 30-9-420 reserved.

30-9-421. Rules for agricultural lien filing — duties — perfection and priority rights. (1) The secretary of state may adopt rules concerning the operation of the central agricultural security interest computer filing system, prescribing such matters as format for data and the type of information to be recorded from the financing statement.

(2) A financing statement covering the collateral described in 30-9-403(8) which was filed with a county clerk and recorder prior to July 1, 1985, and

which was sufficient on that date to perfect a security interest in the collateral described therein retains its perfection and priority rights upon being centrally filed.

History: En. Sec. 4, Ch. 683, L. 1985; amd. Sec. 4, Ch. 619, L. 1987.

Cross-References

GENERAL

Perfection of security interest in multiple state jurisdictions, 30-9-103.

Persons who take priority over unperfected security interests — right of "lien creditor", 30-9-301.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Place of filing — erroneous filing — removal of collateral, 30-9-401.

Formal requisites of financing statement — amendments — mortgage as financing statement, 30-9-402.

Assignment of security interest — duties of filing officer — fees, 30-9-405.

30-9-422. Repealed. Sec. 5, Ch. 619, L. 1987.

History: En. Sec. 5, Ch. 683, L. 1985.

30-9-423. Filing provisions not to affect department authority as to branded livestock. Nothing contained in 30-9-403 may be construed to limit the authority of the department of livestock to accept and file notices of security agreements covering branded livestock. All liens on any livestock bearing a recorded brand must be filed with the department of livestock as provided for in 81-8-301.

History: En. Sec. 7, Ch. 683, L. 1985.

30-9-424 through 30-9-430 reserved.

30-9-431. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part, provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989.

Part 5

Default

30-9-501. Default — procedure when security agreement covers both real and personal property. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies, and duties provided in 30-9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement, and those provided in 30-9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (30-9-504(3) and 30-9-505) and with respect to redemption of collateral (30-9-506), but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) 30-9-502(2) and 30-9-504(2) insofar as they require accounting for surplus proceeds of collateral;

(b) 30-9-504(3) and 30-9-505(1), which deal with disposition of collateral;

(c) 30-9-505(2), which deals with acceptance of collateral as discharge of obligation;

(d) 30-9-506, which deals with redemption of collateral; and

(e) 30-9-507(1), which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment, the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

History: En. Sec. 9-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-501; amd. Sec. 81, Ch. 402, L. 1983.

Cross-References

GENERAL

Duty of secured party, 25-13-506.

Purposes — rules of construction — variation by agreement, 30-1-102.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Secured party's right to take possession after default, 30-9-503.

Defrauding creditors, 45-6-315.

DEFINITIONAL

Agreement, 30-1-201.
Collateral, 30-9-105.
Debtor, 30-9-105.
Documents, 30-9-105.
Goods, 30-9-105.
Remedy, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.

30-9-502. Collection rights of secured party. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under 30-9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

History: En. Sec. 9-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-502; amd. Sec. 82, Ch. 402, L. 1983.

Cross-References

GENERAL

Duty of secured party, 25-13-506.

Policy and subject matter of chapter, 30-9-102.

Transactions excluded from chapter, 30-9-104.

Use or disposition of collateral without accounting permissible, 30-9-205.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

Secured party's liability for failure to comply with this part, 30-9-507.

DEFINITIONAL

Account, 30-9-106.
Account debtor, 30-9-105.
Agreement, 30-1-201.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Debtor, 30-9-105.
Instrument, 30-9-105.
Notify, 30-1-201.
Proceeds, 30-9-306.
Secured party, 30-9-105.
Security agreement, 30-9-105.

30-9-503. Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under 30-9-504.

History: En. Sec. 9-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-503.

Cross-References

GENERAL

Personal property subject to a security interest, 25-13-505.

Duty of secured party, 25-13-506.

DEFINITIONAL

Action, 30-1-201.

Collateral, 30-9-105.

Debtor, 30-9-105.

Equipment, 30-9-109.

Rights, 30-1-201.

Secured party, 30-9-105.

Security agreement, 30-9-105.

30-9-504. Secured party's right to dispose of collateral after default — effect of disposition. (1) A secured party after default may sell, lease, or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the chapter on sales (chapter 2). The proceeds of disposition shall be applied in the order following to:

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of account or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) (a) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party

may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(b) Notification by the secured party is reasonable under subsection (3)(a) and constitutes steps reasonably required to inform another in the ordinary course under 30-1-201(26) if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:

(i) the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or

(ii) such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (3)(b)(i) or this subsection (3)(b)(ii).

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders, or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement, or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

History: En. Sec. 9-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-504; amd. Sec. 83, Ch. 402, L. 1983; amd. Sec. 1, Ch. 3, L. 1987.

Cross-References

GENERAL

Property subject to a security interest — disposition of proceeds — security agreement, 25-13-712.

Seller's resale including contract for resale, 30-2-706.

Policy and subject matter of chapter, 30-9-102.

Where collateral is not owned by debtor, 30-9-112.

Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation, 30-9-505.

Secured party's liability for failure to comply with this part, 30-9-507.

DEFINITIONAL

Account, 30-9-106.
Agreement, 30-1-201.
Chattel paper, 30-9-105.
Collateral, 30-9-105.
Consumer goods, 30-9-109.
Contract, 30-1-201.
Debtor, 30-9-105.
Financing statement, 30-9-402.
Gives notification, 30-1-201.
Good faith, 30-1-201.
Goods, 30-9-105.
Knowledge, 30-1-201.
Person, 30-1-201.
Proceeds, 30-9-306.
Purchaser, 30-1-201.
Receives notification, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Secured party, 30-9-105.
Security agreement, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.
Written, 30-1-201.

30-9-505. Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation. (1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods and has not signed after default a statement renouncing or modifying his rights under this part, a secured party who has taken possession of collateral must dispose of it under 30-9-504, and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under 30-9-507(1) on secured party's liability.

(2) (a) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection (2). In the case of consumer goods, no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral.

(b) Notice by the secured party is sufficient under subsection (2)(a) and constitutes steps reasonably required to inform another in the ordinary course under 30-1-201(26) if it is sent by certified mail to the most recent address provided by the debtor or another secured party as follows:

(i) the address stated on the security agreement or other applicable loan document in the case of a debtor or on the written notice of claim in the case of another secured party; or

(ii) such other address of which the secured party receives notice in writing from the debtor or other secured party prior to the time notification is sent to the most recent address previously given under subsection (2)(b)(i) or this subsection (2)(b)(ii).

(c) If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under 30-9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

History: En. Sec. 9-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-505; amd. Sec. 84, Ch. 402, L. 1983; amd. Sec. 2, Ch. 3, L. 1987.

Cross-References

GENERAL

Property subject to a security interest — disposition of proceeds — security agreement, 25-13-712.

DEFINITIONAL

Collateral, 30-9-105.
Consumer goods, 30-9-109.
Debtor, 30-9-105.
Knows, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase money security interest, 30-9-107.
Receives notification, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.
Send, 30-1-201.
Signed, 30-1-201.
Written, 30-1-201.

30-9-506. Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under 30-9-504 or before the obligation has been discharged under 30-9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

History: En. Sec. 9-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-506.

Cross-References

GENERAL

Redemption of real property, Title 25, ch. 13, part 8.

Redemption, 71-3-116.

Right to redeem, 71-3-117.

DEFINITIONAL

Agreement, 30-1-201.

Collateral, 30-9-105.

Contract, 30-1-201.

Debtor, 30-9-105.

Secured party, 30-9-105.

Writing, 30-1-201.

30-9-507. Secured party's liability for failure to comply with this part. (1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

History: En. Sec. 9-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-507.

Cross-References

GENERAL

Duty of secured party, 25-13-506.

Title to collateral immaterial, 30-9-202.

Obligation of good faith, 30-1-203.

Request for statement of account or list of collateral, 30-9-208.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

DEFINITIONAL

Collateral, 30-9-105.

Consumer goods, 30-9-109.
Creditor, 30-1-201.
Debtor, 30-9-105.
Knows, 30-1-201.
Notification, 30-1-201.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.
Secured party, 30-9-105.
Security interest, 30-1-201.

30-9-508. Foreclosure of security interests in personal property. An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure by action of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest, but the remedial scope of proceedings for the foreclosure of interests subject to this chapter is governed by this part.

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R.C.M. 1921; re-en. Sec. 8286, R.C.M. 1935; amd. Sec. 11-135, Ch. 264, L. 1963; R.C.M. 1947, 52-312; amd. Sec. 1, Ch. 189, L. 1979.

Cross-References

Personal property subject to a security interest, 25-13-505.

Duty of secured party, 25-13-506.

Default — procedure when security agreement covers both real and personal property, 30-9-501.

Secured party's right to dispose of collateral after default — effect of disposition, 30-9-504.

Filing of liens, rights, procedure, fees (motor vehicles), 61-3-103.

Foreclosure of real property mortgages, 71-1-222.

30-9-509. Repealed. Sec. 3, Ch. 189, L. 1979.

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R.C.M. 1921; re-en. Sec. 8287, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963; R.C.M. 1947, 52-313.

30-9-510. Repealed. Sec. 3, Ch. 189, L. 1979.

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R.C.M. 1921; re-en. Sec. 8288, R.C.M. 1935; amd. Sec. 11-137, Ch. 264, L. 1963; R.C.M. 1947, 52-314.

30-9-511. Counsel fees on foreclosure. In an action to foreclose a security interest in personal property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, notwithstanding any stipulation in the instrument or any agreement between the parties to the contrary.

History: En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).

Cross-References

Determining compensation of attorneys, 25-10-301.

Inclusion of attorney's fees in bill of costs, 25-10-302.

CHAPTER 10

SECURITIES REGULATION

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Chapter Cross-References

Registration of public obligations, Title 17, ch. 5, part 11.

Uniform Commercial Code investment securities, Title 30, ch. 8.

Part 1

General Application

30-10-101. Short title. Parts 1 through 3 of this chapter may be cited as the "Securities Act of Montana".

History: En. Sec. 2, Ch. 251, L. 1961; R.C.M. 1947, 15-2002.

30-10-102. Policy. Parts 1 through 3 of this chapter shall be construed to:

(1) protect the investor, persons engaged in securities transactions, and the public interest;

(2) promote uniformity among the states; and

(3) encourage, promote, and facilitate capital investment in Montana.

History: En. Sec. 3, Ch. 251, L. 1961; R.C.M. 1947, 15-2003; amd. Sec. 1, Ch. 322, L. 1983.

30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsection (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105 except when registration as a salesman, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of such real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(6) "Commodity Exchange Act" means the federal statute of that name as amended on the effective date of this subsection.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(8) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(9) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more

commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(vii) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include an individual registered as a salesman pursuant to 30-10-201.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of

interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(16) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) such other items as the commissioner may by rule or order specify.

(17) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(19) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in,

temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(20) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(21) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

History: En. Sec. 4, Ch. 251, L. 1961; R.C.M. 1947, 15-2004; amd. Secs. 1, 8, Ch. 351, L. 1979; amd. Sec. 2, Ch. 322, L. 1983; amd. Sec. 1, Ch. 478, L. 1985; amd. Sec. 1, Ch. 269, L. 1987; amd. Sec. 1, Ch. 270, L. 1987; amd. Sec. 1, Ch. 272, L. 1987; amd. Sec. 76, Ch. 370, L. 1987; amd. Sec. 1, Ch. 249, L. 1989; amd. Sec. 1, Ch. 2, L. 1991; amd. Sec. 1, Ch. 228, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 2 in definition of salesman, in (2)(b), inserted exception clause; in definition of commodity investment contract inserted second sentence of (b) regarding effect of commodities held as collateral or subject to lien on physical delivery; in definition of security, in first sentence after "instrument commonly known as a security", inserted "any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security"; and made minor change in style. Amendment effective January 29, 1991.

Chapter 228 in definition of security, in last sentence before "sum", inserted "fixed".

30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (14) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by such railroad or public utility would be exempt under this subsection;

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 ½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (7)(d), means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(9) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection;

(14) any security issued by and representing an interest in or a debt of or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state.

History: En. Sec. 13, Ch. 251, L. 1961; R.C.M. 1947, 15-2013; amd. Sec. 2, Ch. 351, L. 1979; amd. Sec. 3, Ch. 322, L. 1983; amd. Sec. 2, Ch. 478, L. 1985; amd. Sec. 2, Ch. 272, L. 1987; amd. Sec. 2, Ch. 249, L. 1989; amd. Sec. 2, Ch. 228, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (14) relating to securities issued by insurers.

Cross-References

Authorization to issue securities, 69-14-507.

30-10-105. Exempt transactions. Except as expressly provided in this section, 30-10-201 through 30-10-207 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has been no default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or

institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended;

(b) any transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by any subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and a public proceeding or examination looking toward such an order is not pending under either law;

(12) an offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner in his discretion may adopt to serve the purposes of 30-10-102. The commissioner may in his discretion require that 30-10-201 through 30-10-207 apply to any or all transactional exemptions adopted by rule.

(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company as defined in 90-8-104, provided that the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:

(i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any by-product of the commodity; or

(21) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code.

History: En. Sec. 14, Ch. 251, L. 1961; amd. Sec. 1, Ch. 185, L. 1973; R.C.M. 1947, 15-2014; amd. Sec. 3, Ch. 351, L. 1979; amd. Sec. 4, Ch. 322, L. 1983; amd. Sec. 3, Ch. 478, L. 1985; amd. Sec. 1, Ch. 479, L. 1985; amd. Sec. 2, Ch. 270, L. 1987; amd. Sec. 3, Ch. 272, L. 1987; amd. Sec. 6, Ch. 671, L. 1989; amd. Sec. 1, Ch. 46, L. 1991; amd. Sec. 1, Ch. 263, L. 1991; amd. Sec. 1, Ch. 278, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 46 in (2)(a)(ii), after "3 years", inserted "and there has been no default"; inserted (19)(c) requiring that quantities of precious metals purchased and delivered to a depository institution be physically located within Montana at all times after delivery; at end of (21), after "Code", deleted "of 1986"; and made minor changes in style.

Chapter 263 in (16), at beginning of subsection, substituted "a transaction in the securities of" for "any transaction by" and inserted reference to a certified Montana small business investment capital company; and made minor changes in style. Amendment effective March 29, 1991.

Chapter 278 inserted (8)(b) creating a limited offering exemption directed to not more than 25 persons; in (8)(c) changed subsection reference; in (9)(b) increased number of subscribers from 10 to 25; and made minor changes in style.

Retroactive Applicability: Section 20, Ch. 263, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to events occurring after December 31, 1990."

Cross-References

Transfer or pledge within a central depository system, 30-8-320.

Injunctions, 30-10-305.

30-10-106. Proof of exemption. In any proceeding under parts 1 through 3 of this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: En. Sec. 25, Ch. 251, L. 1961; R.C.M. 1947, 15-2025.

30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter shall be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of parts 1 through 3 of this chapter. No rule or form may be made unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of parts 1 through 3 of this chapter authorizes the commissioner or any of his officers or employees to disclose any such information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) No provision of parts 1 through 3 of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders which have ever been entered under parts 1 through 3 of this chapter. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

(6) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under parts 1 through 3 of this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(1), (3) thru (7); amd. Sec. 8, Ch. 351, L. 1979; amd. Sec. 5, Ch. 322, L. 1983.

Cross-References

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

Investigations and subpoenas, 30-10-304.

Injunctions, 30-10-305.

30-10-108 and 30-10-109 reserved.

30-10-110. Scope. (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is:

(i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

History: En. Sec. 1, Ch. 285, L. 1985; amd. Sec. 2, Ch. 269, L. 1987.

30-10-111 through 30-10-114 reserved.

30-10-115. Deposits to the general fund. All fees, examination charges, and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter must be deposited in the general fund.

History: En. Sec. 2, Ch. 385, L. 1985; amd. Sec. 4, Ch. 351, L. 1989.

30-10-116. Repealed. Sec. 9, Ch. 351, L. 1989.
History: En. Sec. 3, Ch. 385, L. 1985.

30-10-117. Repealed. Sec. 9, Ch. 351, L. 1989.
History: En. Sec. 4, Ch. 385, L. 1985.

30-10-118. Repealed. Sec. 9, Ch. 351, L. 1989.
History: En. Sec. 5, Ch. 385, L. 1985.

Part 2

Registration

30-10-201. Registration of broker-dealers, salesmen, investment advisers, and investment adviser representatives. (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesman, except as provided in 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter;

(c) his only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than $1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner; or

(d) he has no place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not he or any of the persons to whom the communications are directed are then present in this state.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or

an investment adviser or investment adviser representative may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. No registration application of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.

(6) When the registration requirements are met, the commissioner shall make the registration effective. No effective registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn or terminated without the express written consent of the commissioner.

(7) Except as provided in subsection (6), registration of a broker-dealer, salesman, investment adviser, or investment adviser representative:

(a) is effective until December 31 following such registration or such other time as the commissioner may by rule adopt; and

(b) may be renewed.

(8) The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(9) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner.

(10) Registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be renewed by filing, prior to the expiration thereof, an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, investment adviser, or investment adviser representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser

may file an application for registration of a successor, to become effective upon approval of the commissioner.

(11) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(12) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, investment adviser, or investment adviser representative if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected; or

(k) has failed to reasonably supervise his salesmen or employees or his investment adviser representatives or employees to assure their compliance with this act.

(13) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

(14) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(15) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman or investment adviser representative, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(16) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesman, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(17) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon such broker-dealer, salesman, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter.

History: En. Sec. 6, Ch. 251, L. 1961; amd. Sec. 1, Ch. 265, L. 1977; amd. Sec. 1, Ch. 275, L. 1977; R.C.M. 1947, 15-2006; amd. Sec. 4, Ch. 137, L. 1979; amd. Sec. 4, Ch. 351, L. 1979; amd. Sec. 1, Ch. 279, L. 1981; amd. Sec. 1, Ch. 407, L. 1985; amd. Sec. 4, Ch. 478, L. 1985; amd. Sec. 3, Ch. 269, L. 1987; amd. Sec. 4, Ch. 272, L. 1987; amd. Sec. 3, Ch. 249, L. 1989; amd. Sec. 2, Ch. 2, L. 1991.

Compiler's Comments

1991 Amendment: In (12)(k), after "salesmen or employees", deleted "if he is a broker-dealer" and after "representatives or employees" deleted "if he is an investment adviser". Amendment effective January 29, 1991.

Cross-References

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Administration, 30-10-107.

Prohibited practices, 30-10-301.

Unlawful representation concerning registration or exemption, 30-10-303.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Effect of conviction on civil rights, 46-18-801.

30-10-202. Registration of securities. It is unlawful for any person to offer or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless such security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter.

History: En. Sec. 7, Ch. 251, L. 1961; R.C.M. 1947, 15-2007; amd. Sec. 2, Ch. 279, L. 1981.

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

Civil liabilities, 30-10-307.

30-10-203. Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under parts 1 through 3 of this chapter:

(a) any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(i) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(ii) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

(A) equal at least 5% of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

(B) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for 3 full fiscal years, equal at least 5% of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under parts 1 through 3 of this chapter or a predecessor law or the security being registered was originally issued pursuant to an exemption under parts 1 through 3 of this chapter or a predecessor law.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) a statement demonstrating eligibility for registration by notification;

(b) with respect to the issuer: its name, address, and form of organization, the state (or foreign jurisdiction) and the date of its organization, and the general character and location of its business;

(c) a description of the securities being registered;

(d) total amount of securities to be offered and amount of securities to be offered in this state;

(e) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons (other than as underwriting and selling discounts or commissions) and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value);

(f) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) description of any security options outstanding or to be created in connection with the offering;

(h) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the United States securities and exchange commission;

(i) a copy of any offering circular or prospectus to be used in connection with the offering;

(j) in the case of any registration under subsection (1)(b) of this section relating to nonissuer distribution which does not also satisfy the conditions of subsection (1)(a) of this section, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 2 years;

(k) a consent to service of process meeting the requirements of 30-10-208; and

(l) such other information as the commissioner may require.

(3) If no stop order is in effect and no proceeding is pending under 30-10-207, a registration statement by notification automatically becomes effective at noon the 10th business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

History: **En. Sec. 8, Ch. 251, L. 1961; R.C.M. 1947, 15-2008; amd. Sec. 3, Ch. 279, L. 1981.**

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-204. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) one copy of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; and

(i) such other information as the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (3) of this section, the commissioner may enter a denial order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsections (2) and (3) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the denial order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective, the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under 30-10-207; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History: En. Sec. 9, Ch. 251, L. 1961; R.C.M. 1947, 15-2009; amd. Sec. 4, Ch. 279, L. 1981; amd. Sec. 5, Ch. 272, L. 1987; amd. Sec. 77, Ch. 370, L. 1987.

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-205. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by him as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries);

(c) with respect to any person not named in subsection (1)(b) of this section owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) of this section other than his occupation;

(d) with respect to every promoter not named in subsection (1)(b) of this section, if the issuer was organized within the past 3 years: the information specified in subsection (1)(b) of this section, any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;

(e) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsections (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission, a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(k) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(l) a specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(m) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(n) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(o) a consent to service of process meeting the requirements of 30-10-208; and

(p) such other information as the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

History: **En. Sec. 10, Ch. 251, L. 1961; R.C.M. 1947, 15-2010; amd. Sec. 5, Ch. 279, L. 1981.**

Cross-References

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-206. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in such stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesman who offers or sells registered securities must be registered pursuant to 30-10-201.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) No securities registration statement may be withdrawn, whether or not such statement has become effective, without the express written consent of the commissioner.

History: En. Sec. 11, Ch. 251, L. 1961; amd. Sec. 1, Ch. 71, L. 1963; amd. Sec. 1, Ch. 150, L. 1977; R.C.M. 1947, 15-2011; amd. Sec. 6, Ch. 279, L. 1981; amd. Sec. 5, Ch. 478, L. 1985; amd. Sec. 1, Ch. 107, L. 1987; amd. Sec. 6, Ch. 272, L. 1987; amd. Sec. 3, Ch. 2, L. 1991.

Compiler's Comments

1991 Amendment: In (1) deleted second sentence that read: "Any document filed under parts 1 through 3 of this chapter or a predecessor law within 3 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate"; and in (3) inserted last sentence requiring registration of securities salesman. Amendment effective January 29, 1991.

Cross-References

Administration, 30-10-107.

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-207. Denial, suspension, and revocation of registration of securities. (1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully imposed under parts 1 through 3 of this chapter has been willfully violated, in connection with the offering, by:

(i) the person filing the registration statement;

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(i) the commissioner may not institute a proceeding against an effective registration statement under this subsection (c) more than 1 year from the date of the injunction relied on; and

(ii) he may not enter an order under this subsection (c) on the basis of an injunction entered under any other state law unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for such registration;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by 30-10-204(1)(g);

(h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner may enter only a denial order under this subsection, and he shall vacate any such order when the deficiency has been corrected; or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a suspension or revocation order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective.

(3) Upon the entry of an order under subsection (1) of this section, the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons therefor and that, if requested by the issuer or registrant within 15 days after the receipt of the commissioner's notification, the matter will be set promptly down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

History: En. Sec. 12, Ch. 251, L. 1961; R.C.M. 1947, 15-2012; amd. Sec. 7, Ch. 272, L. 1987.

Cross-References

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

30-10-208. Consent to service of process — manner of service. (1) Every applicant for registration as a broker-dealer, investment adviser, salesman, or investment adviser representative under parts 1 through 3 of this chapter and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor, or administrator which arises under parts 1 through 3 of this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at its or his last address on file with the commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: En. Sec. 15, Ch. 251, L. 1961; amd. Sec. 1, Ch. 105, L. 1963; R.C.M. 1947, 15-2015; amd. Sec. 4, Ch. 2, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (1), after "salesman", inserted "or investment adviser representative" and deleted last sentence that read: "A person who has filed such a consent in connection with a previous registration need not file another"; and made minor changes in style. Amendment effective January 29, 1991.

Cross-References

Service of process — alternative methods, Title 25, ch. 3, part 5.

Long arm statutes, 25-3-601, 35-18-107.

30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $200 or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman or investment adviser representative, the fee shall be $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee shall be established by the commissioner by rule. For a request for any other exemp-

tion or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) All fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited in the general fund.

History: En. Sec. 16, Ch. 251, L. 1961; amd. Sec. 1, Ch. 242, L. 1977; R.C.M. 1947, 15-2016; amd. Sec. 1, Ch. 281, L. 1981; amd. Sec. 6, Ch. 322, L. 1983; amd. Sec. 1, Ch. 385, L. 1985; amd. Sec. 6, Ch. 478, L. 1985; amd. Sec. 4, Ch. 269, L. 1987; amd. Sec. 8, Ch. 272, L. 1987; amd. Sec. 5, Ch. 351, L. 1989; amd. Sec. 5, Ch. 2, L. 1991.

Compiler's Comments

1991 Amendment: In (3), after "certified", inserted "or uncertified". Amendment effective January 29, 1991.

Cross-References

Administration, 30-10-107.

30-10-210. Examination costs. (1) An issuer, broker-dealer, or investment adviser who is examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization; however, no reimbursement of expenses may be required for routine examinations performed in connection with an application for registration. No person may pay and no examiner may accept additional emolument on account of such an examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If an issuer, broker-dealer, or investment adviser fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid is a first lien upon all of the assets and property in this state of the issuer, broker-dealer, or investment adviser and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of the issuer, broker-dealer, or investment adviser to pay the charges and expenses also works a forfeiture of his or its right to do business in this state under parts 1 through 3 of this chapter.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(2); amd. Sec. 5, Ch. 351, L. 1979; amd. Sec. 7, Ch. 279, L. 1981; amd. Sec. 4, Ch. 249, L. 1989.

Cross-References

Registration of broker-dealers, salesmen, and investment advisers, 30-10-201.

Investigations and subpoenas, 30-10-304.

Part 3

Offenses and Penalties

30-10-301. Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

(i) to employ any device, scheme, or artifice to defraud the other person;

(ii) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(iii) without disclosing to the client in writing before the completion of the transaction the capacity in which he is acting and obtaining the consent of the client to the transaction:

(A) acting as principal for his own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than such client, to knowingly effect the sale or purchase of any security for the account of such client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to such transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

(a) make a false statement of a material fact; or

(b) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(a) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged

over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits such custody; or

(b) in the absence of rule, the investment adviser fails to notify the commissioner that he has or may have such custody.

History: En. Sec. 5, Ch. 251, L. 1961; R.C.M. 1947, 15-2005; amd. Sec. 1, Ch. 280, L. 1981; amd. Sec. 9, Ch. 272, L. 1987.

Cross-References

Registration of broker-dealers, salesmen, and investment advisers, 30-10-201.

30-10-302. Misleading filings. It is unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under parts 1 through 3 of this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History: En. Sec. 17, Ch. 251, L. 1961; R.C.M. 1947, 15-2017.

Cross-References

Administration, 30-10-107.

Examination costs, 30-10-210.

Criminal liabilities, 30-10-306.

30-10-303. Unlawful representation concerning registration or exemption. Neither the fact that an application for registration under 30-10-201(4) or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed nor the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

History: En. Sec. 18, Ch. 251, L. 1961; R.C.M. 1947, 15-2018; amd. Sec. 6, Ch. 351, L. 1979.

30-10-304. Investigations and subpoenas. (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) (a) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(b) The commissioner may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Securities Act of Montana if the activities had occurred in this state.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal case. Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) The office of the securities commissioner is a criminal justice agency as defined in 44-5-103.

History: En. Sec. 19, Ch. 251, L. 1961; R.C.M. 1947, 15-2019; amd. Sec. 1, Ch. 577, L. 1983; amd. Sec. 10, Ch. 272, L. 1987; amd. Sec. 1, Ch. 107, L. 1989.

Cross-References

Examination costs, 30-10-210.

Criminal liabilities, 30-10-306.

Perjury, 45-7-201.

30-10-305. Injunctions and other remedies — limitations on actions. (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after the hearing on the allegations contained in the cease and desist order is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued thereunder, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or his staff of the facts constituting the violation.

(c) In no event may an action be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued thereunder unless it is brought within 5 years after the transaction on which the action is based.

History: En. Sec. 20, Ch. 251, L. 1961; R.C.M. 1947, 15-2020; amd. Sec. 7, Ch. 351, L. 1979; amd. Sec. 2, Ch. 407, L. 1985; amd. Sec. 7, Ch. 478, L. 1985; amd. Sec. 1, Ch. 231, L. 1987; amd. Sec. 5, Ch. 249, L. 1989.

Cross-References

Administration, 30-10-107.

30-10-306. Criminal liabilities. (1) Any person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than 10 years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than 1 year shall be mandatory. No indictment or information may be returned under parts 1 through 3 of this chapter more than 8 years after the alleged violation; however, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.

(2) The commissioner may refer such evidence as may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under parts 1 through 3 of this chapter.

(3) Nothing in parts 1 through 3 of this chapter limits the power of the state to punish any person for any conduct which constitutes a crime.

History: En. Sec. 21, Ch. 251, L. 1961; R.C.M. 1947, 15-2021; amd. Sec. 1, Ch. 394, L. 1981.

Cross-References

Registration of broker-dealers, salesmen, and investment advisers, 30-10-201.

Denial, suspension, and revocation of registration of securities, 30-10-207.

30-10-307. Civil liabilities — limitations on actions. (1) Any person who offers or sells a security in violation of 30-10-202 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 10% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 10% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 10% per annum from the date of payment, less the amount of any income received on the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest.

(5) (a) No action may be maintained under this section to enforce any liability founded on a violation of 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) No action may be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 2 years after discovery of the fraud or misrepresentation on which the liability is founded or after such discovery should have been made by the exercise of reasonable diligence.

(c) In no event may an action be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 5 years after the transaction on which the action is based.

History: En. Sec. 22, Ch. 251, L. 1961; amd. Sec. 1, Ch. 213, L. 1967; R.C.M. 1947, 15-2022; amd. Sec. 2, Ch. 280, L. 1981; amd. Sec. 2, Ch. 231, L. 1987; amd. Sec. 11, Ch. 272, L. 1987.

Cross-References

Registration by notification, 30-10-203.

Registration by coordination, 30-10-204.

30-10-308. Judicial review of orders. Any person aggrieved by a final order of the commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History: En. Sec. 23, Ch. 251, L. 1961; R.C.M. 1947, 15-2023.

Cross-References

Administration, 30-10-107.

Part 4

Fiduciary Security Transfers

30-10-401. Short title. This part may be cited as the "Uniform Act for the Simplification of Fiduciary Security Transfers".

History: En. Sec. 11, Ch. 101, L. 1963; R.C.M. 1947, 15-662.

30-10-402. Definitions. In this part, unless the context otherwise requires, the following definitions apply:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association, or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

History: En. Sec. 1, Ch. 101, L. 1963; R.C.M. 1947, 15-652.

30-10-403. Registration in the name of fiduciary. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

History: En. Sec. 2, Ch. 101, L. 1963; R.C.M. 1947, 15-653.

Cross-References

General provisions regarding registration of securities, 30-10-206.

30-10-404. Assignment by fiduciary. Except as otherwise provided in this part, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

History: En. Sec. 3, Ch. 101, L. 1963; R.C.M. 1947, 15-654.

30-10-405. Evidence of appointment or incumbency. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may

adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (2) except to the extent that the contents relate directly to the appointment or incumbency.

History: En. Sec. 4, Ch. 101, L. 1963; R.C.M. 1947, 15-655.

30-10-406. Adverse claims. (1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this part relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

History: En. Sec. 5, Ch. 101, L. 1963; R.C.M. 1947, 15-656.

30-10-407. Nonliability of corporation and transfer agent. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this part.

History: En. Sec. 6, Ch. 101, L. 1963; R.C.M. 1947, 15-657.

30-10-408. Nonliability of third persons. (1) No person who participates in the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this part incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent.

History: En. Sec. 7, Ch. 101, L. 1963; R.C.M. 1947, 15-658.

30-10-409. Territorial application. (1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(2) This part applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

History: En. Sec. 8, Ch. 101, L. 1963; R.C.M. 1947, 15-659.

Cross-References

Applicability (investment securities), 30-8-106.

30-10-410. Tax obligations. This part does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

History: En. Sec. 9, Ch. 101, L. 1963; R.C.M. 1947, 15-660.

Cross-References

Estate tax, Title 72, ch. 16, part 9.

30-10-411. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 10, Ch. 101, L. 1963; R.C.M. 1947, 15-661.

CHAPTER 11

SALES

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Chapter Cross-References

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

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Sales and Exchanges

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Execution sale, 25-13-701.

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Sale under attachment proceeding, 27-18-801 through 27-18-803.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Retail Installment Sales Act, Title 31, ch. 1, part 2.

Sale after mortgage foreclosure, 71-1-222.

Itinerant merchants, 80-3-701.

Sale of agricultural products generally, Title 80, ch. 11.

Regulation of sale of milk, 81-23-102.

Regulation of sale of coal, 82-3-201.

30-11-101. Sale defined. Sale is a contract by which, for a pecuniary consideration called a price, one transfers to another an interest in property.

History: En. Sec. 2310, Civ. C. 1895; re-en. Sec. 5079, Rev. C. 1907; re-en. Sec. 7581, R.C.M. 1921; Cal. Civ. C. Sec. 1721; Field Civ. C. Sec. 855; re-en. Sec. 7581, R.C.M. 1935; R.C.M. 1947, 74-101.

Cross-References

Uniform Commercial Code — sales, Title 30, ch. 2.

Application to exchanges, 30-11-113.

Auction sales, Title 30, ch. 11, part 5.

30-11-102. Subject of sale. The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

History: **En. Sec. 2311, Civ. C. 1895; re-en. Sec. 5080, Rev. C. 1907; re-en. Sec. 7582, R.C.M. 1921; Cal. Civ. C. Sec. 1722; Field Civ. C. Sec. 856; re-en. Sec. 7582, R.C.M. 1935; R.C.M. 1947, 74-102.**

30-11-103. Agreement for sale. An agreement for sale is either:

(1) an agreement to sell;
(2) an agreement to buy; or
(3) a mutual agreement to sell and buy.

History: **En. Sec. 2320, Civ. C. 1895; re-en. Sec. 5081, Rev. C. 1907; re-en. Sec. 7583, R.C.M. 1921; Cal. Civ. C. Sec. 1726; Field Civ. C. Sec. 857; re-en. Sec. 7583, R.C.M. 1935; R.C.M. 1947, 74-103.**

Cross-References

Contracts, Title 28, ch. 2.

30-11-104. Agreement to sell. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

History: **En. Sec. 2321, Civ. C. 1895; re-en. Sec. 5082, Rev. C. 1907; re-en. Sec. 7584, R.C.M. 1921; Cal. Civ. C. Sec. 1727; Field Civ. C. Sec. 858; re-en. Sec. 7584, R.C.M. 1935; R.C.M. 1947, 74-104.**

30-11-105. Agreement to buy. An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.

History: **En. Sec. 2322, Civ. C. 1895; re-en. Sec. 5083, Rev. C. 1907; re-en. Sec. 7585, R.C.M. 1921; Cal. Civ. C. Sec. 1728; Field Civ. C. Sec. 859; re-en. Sec. 7585, R.C.M. 1935; R.C.M. 1947, 74-105.**

30-11-106. Agreement to sell and buy. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

History: **En. Sec. 2323, Civ. C. 1895; re-en. Sec. 5084, Rev. C. 1907; re-en. Sec. 7586, R.C.M. 1921; Cal. Civ. C. Sec. 1729; Field Civ. C. Sec. 860; re-en. Sec. 7586, R.C.M. 1935; R.C.M. 1947, 74-106.**

30-11-107. What may be the subject of the contract. Any property which, if in existence, might be the subject of sale may be the subject of an agreement for sale, whether in existence or not.

History: **En. Sec. 2324, Civ. C. 1895; re-en. Sec. 5085, Rev. C. 1907; re-en. Sec. 7587, R.C.M. 1921; Cal. Civ. C. Sec. 1730; Field Civ. C. Sec. 861; re-en. Sec. 7587, R.C.M. 1935; R.C.M. 1947, 74-107.**

30-11-108. Agreement to sell real property. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

History: **En. Sec. 2325, Civ. C. 1895; re-en. Sec. 5086, Rev. C. 1907; re-en. Sec. 7588, R.C.M. 1921; Cal. Civ. C. Sec. 1731; Based on Field Civ. C. Sec. 862; re-en. Sec. 7588, R.C.M. 1935; R.C.M. 1947, 74-108.**

Cross-References

Lien of seller of real property, 71-3-1301 through 71-3-1303.

Transfer of real property, Title 70, ch. 20.

30-11-109. Usual common-law covenants required by such contracts, when. An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of "seisin", "quiet enjoyment", "further assurance", "general warranty", and "against encumbrances".

History: En. Sec. 2326, Civ. C. 1895; re-en. Sec. 5087, Rev. C. 1907; re-en. Sec. 7589, R.C.M. 1921; Cal. Civ. C. Sec. 1733; Field Civ. C. Sec. 863; re-en. Sec. 7589, R.C.M. 1935; R.C.M. 1947, 74-109.

Cross-References

What included in authority to sell real property, 28-10-422.

Covenants running with the land, Title 70, ch. 17, part 2.

Implied covenants, 70-20-304.

30-11-110. Form of covenants. The covenants mentioned in 30-11-109 must be in substance as follows:

"The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

History: En. Sec. 2327, Civ. C. 1895; re-en. Sec. 5088, Rev. C. 1907; re-en. Sec. 7590, R.C.M. 1921; Cal. Civ. C. Sec. 1734; Field Civ. C. Sec. 864; re-en. Sec. 7590, R.C.M. 1935; R.C.M. 1947, 74-110.

Cross-References

Damages for breach of covenant, 27-1-316.

What included in authority to sell real property, 28-10-422.

Covenants running with the land, Title 70, ch. 17, part 2.

Covenants implied from words of grant, 70-20-304.

30-11-111. Contract for sale of real property. No agreement for the sale of real property or of any interest therein is valid unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

History: En. Sec. 2342, Civ. C. 1895; re-en. Sec. 5091, Rev. C. 1907; re-en. Sec. 7593, R.C.M. 1921; Cal. Civ. C. Sec. 1741; Based on Field Civ. C. Sec. 867; re-en. Sec. 7593, R.C.M. 1935; R.C.M. 1947, 74-203.

Cross-References

What contracts must be in writing, 28-2-903.

Final written expression — parol or extrinsic evidence, 30-2-202.

30-11-112. Exchange defined. Exchange is a contract by which the parties mutually give or agree to give one thing for another, neither thing nor both things being money only.

History: En. Sec. 2430, Civ. C. 1895; re-en. Sec. 5129, Rev. C. 1907; re-en. Sec. 7632, R.C.M. 1921; Cal. Civ. C. Sec. 1804; Field Civ. C. Sec. 903; re-en. Sec. 7632, R.C.M. 1935; R.C.M. 1947, 74-501.

Cross-References
Price payable in money, goods, realty, or otherwise, 30-2-304.

30-11-113. Sale equivalent to exchange. The provisions of the sections on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives and of a buyer as to that which he takes.

History: En. Sec. 2432, Civ. C. 1895; re-en. Sec. 5131, Rev. C. 1907; re-en. Sec. 7634, R.C.M. 1921; Cal. Civ. C. Sec. 1806; Field Civ. C. Sec. 905; re-en. Sec. 7634, R.C.M. 1935; R.C.M. 1947, 74-503.

30-11-114. Warranty of money. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

History: En. Sec. 2433, Civ. C. 1895; re-en. Sec. 5132, Rev. C. 1907; re-en. Sec. 7635, R.C.M. 1921; Cal. Civ. C. Sec. 1807; Field Civ. C. Sec. 906; re-en. Sec. 7635, R.C.M. 1935; R.C.M. 1947, 74-504.

Cross-References
Money, 30-3-107.

30-11-115. Uniform Commercial Code overrides. The provisions of this part do not apply to exchanges subject to the Uniform Commercial Code.

History: En. 74-505 by Sec. 11-151, Ch. 264, L. 1963; R.C.M. 1947, 74-505; amd. Sec. 5, Ch. 137, L. 1979.

Cross-References
Uniform Commercial Code — sales, Title 30, ch. 2.

Part 2

Seller's Responsibilities

30-11-201. When a seller must act as a depositary. After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

History: En. Sec. 2350, Civ. C. 1895; re-en. Sec. 5095, Rev. C. 1907; re-en. Sec. 7598, R.C.M. 1921; Cal. Civ. C. Sec. 1748; Field Civ. C. Sec. 869; re-en. Sec. 7598; R.C.M. 1935; R.C.M. 1947, 74-301.

Cross-References
Attachment of property covered by security interest, 27-18-413.
Uniform Commercial Code — sales, Title 30, ch. 2.
Duty of care — contractual limitation of warehouseman's liability, 30-7-204.
Recovery of livestock, 81-8-312.

30-11-202. When seller may resell. If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the law on liens.

History: En. Sec. 2351, Civ. C. 1895; re-en. Sec. 5096, Rev. C. 1907; re-en. Sec. 7599, R.C.M. 1921; Cal. Civ. C. Sec. 1749; Field Civ. C. Sec. 870; re-en. Sec. 7599, R.C.M. 1935; R.C.M. 1947, 74-302.

Cross-References

Seller's remedies in general, 30-2-703.

Seller's resale including contract for resale, 30-2-706.

30-11-203. Delivery on demand. One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

History: En. Sec. 2360, Civ. C. 1895; re-en. Sec. 5097, Rev. C. 1907; re-en. Sec. 7600, R.C.M. 1921; Cal. Civ. C. Sec. 1753; Field Civ. C. Sec. 871; re-en. Sec. 7600, R.C.M. 1935; R.C.M. 1947, 74-303.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

Effect of seller's tender — delivery on condition, 30-2-507.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-204. Delivery — where made. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

History: En. Sec. 2361, Civ. C. 1895; re-en. Sec. 5098, Rev. C. 1907; re-en. Sec. 7601, R.C.M. 1921; Cal. Civ. C. Sec. 1754; Field Civ. C. Sec. 872; re-en. Sec. 7601, R.C.M. 1935; R.C.M. 1947, 74-304.

Cross-References

Absence of specified place for delivery, 30-2-308.

Manner of seller's tender of delivery, 30-2-503.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-205. Expense of transportation. One who sells personal property must bring it to his own door or other convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

History: En. Sec. 2362, Civ. C. 1895; re-en. Sec. 5099, Rev. C. 1907; re-en. Sec. 7602, R.C.M. 1921; Cal. Civ. C. Sec. 1755; Field Civ. C. Sec. 873; re-en. Sec. 7602, R.C.M. 1935; R.C.M. 1947, 74-305.

Cross-References

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

30-11-206. Notice of election as to delivery. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

History: En. Sec. 2363, Civ. C. 1895; re-en. Sec. 5100, Rev. C. 1907; re-en. Sec. 7603, R.C.M. 1921; Cal. Civ. C. Sec. 1756; Field Civ. C. Sec. 874; re-en. Sec. 7603, R.C.M. 1935; R.C.M. 1947, 74-306.

Cross-References

Absence of specified place for delivery, 30-2-308.

Manner of seller's tender of delivery, 30-2-503.

Effect of seller's tender — delivery on condition, 30-2-507.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-207. Transportation. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending or it will be at his own risk during its transportation. If he follows such directions or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

History: En. Sec. 2364, Civ. C. 1895; re-en. Sec. 5101, Rev. C. 1907; re-en. Sec. 7604, R.C.M. 1921; Cal. Civ. C. Sec. 1757; Field Civ. C. Sec. 875; re-en. Sec. 7604, R.C.M. 1935; R.C.M. 1947, 74-307.

Cross-References

F.O.B. and F.A.S. terms, 30-2-319.

C.I.F. and C.&F. terms, 30-2-320.

30-11-208. Delivery to be within reasonable hours. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

History: En. Sec. 2365, Civ. C. 1895; re-en. Sec. 5102, Rev. C. 1907; re-en. Sec. 7605, R.C.M. 1921; Cal. Civ. C. Sec. 1758; Field Civ. C. Sec. 876; re-en. Sec. 7605, R.C.M. 1935; R.C.M. 1947, 74-308.

Cross-References

Manner of seller's tender of delivery, 30-2-503.

Cure by seller of improper tender or delivery — replacement, 30-2-508.

30-11-209. Warranty defined. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

History: En. Sec. 2370, Civ. C. 1895; re-en. Sec. 5103, Rev. C. 1907; re-en. Sec. 7606, R.C.M. 1921; Cal. Civ. C. Sec. 1763; Field Civ. C. Sec. 877; re-en. Sec. 7606, R.C.M. 1935; R.C.M. 1947, 74-309.

Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

30-11-210. No implied warranty in mere contract of sale. Except as prescribed by this part, a mere contract of sale or agreement to sell does not imply a warranty.

History: En. Sec. 2371, Civ. C. 1895; re-en. Sec. 5104, Rev. C. 1907; re-en. Sec. 7607, R.C.M. 1921; Cal. Civ. C. Sec. 1764; Field Civ. C. Sec. 878; re-en. Sec. 7607, R.C.M. 1935; R.C.M. 1947, 74-310.

Cross-References

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

Third-party beneficiaries of warranties express or implied, 30-2-318.

30-11-211. Warranty of title to personal property. One who sells or agrees to sell personal property as his own thereby warrants that he has a good and unencumbered title thereto.

History: En. Sec. 2372, Civ. C. 1895; re-en. Sec. 5105, Rev. C. 1907; re-en. Sec. 7608, R.C.M. 1921; Cal. Civ. C. Sec. 1765; Field Civ. C. Sec. 879; re-en. Sec. 7608, R.C.M. 1935; R.C.M. 1947, 74-311.

Cross-References

Warranty of title and against infringement — buyer's obligation against infringement, 30-2-312.

30-11-212. Warranty on sale by sample. One who sells or agrees to sell goods by sample thereby warrants the bulk to be equal to the sample.

History: En. Sec. 2373, Civ. C. 1895; re-en. Sec. 5106, Rev. C. 1907; re-en. Sec. 7609, R.C.M. 1921; Cal. Civ. C. Sec. 1766; Field Civ. C. Sec. 880; re-en. Sec. 7609, R.C.M. 1935; R.C.M. 1947, 74-312.

Cross-References

Express warranties by affirmation, promise, description, sample, 30-2-313.

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

30-11-213. Warranty when seller knows that buyer relies on his statements. One who sells or agrees to sell personal property knowing that the buyer relies upon his advice or judgment thereby warrants to the buyer that neither the seller nor any agent employed by him in the transaction knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

History: En. Sec. 2374, Civ. C. 1895; re-en. Sec. 5107, Rev. C. 1907; re-en. Sec. 7610, R.C.M. 1921; Cal. Civ. C. Sec. 1767; Field Civ. C. Sec. 881; re-en. Sec. 7610, R.C.M. 1935; R.C.M. 1947, 74-313.

Cross-References

Express warranties by affirmation, promise, description, sample, 30-2-313.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-214. Warranty when merchandise not in existence. One who agrees to sell merchandise not then in existence thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so at the place of delivery as can be secured by reasonable care.

History: En. Sec. 2375, Civ. C. 1895; re-en. Sec. 5108, Rev. C. 1907; re-en. Sec. 7611, R.C.M. 1921; Cal. Civ. C. Sec. 1768; Field Civ. C. Sec. 882; re-en. Sec. 7611, R.C.M. 1935; R.C.M. 1947, 74-314.

Cross-References

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-215. Manufacturer's warranty against latent defects. One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

History: En. Sec. 2376, Civ. C. 1895; re-en. Sec. 5109, Rev. C. 1907; re-en. Sec. 7612, R.C.M. 1921; Cal. Civ. C. Sec. 1769; Field Civ. C. Sec. 883; re-en. Sec. 7612, R.C.M. 1935; R.C.M. 1947, 74-315.

Cross-References

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-216. Warranty of fitness for particular purpose. One who manufactures an article under an order for a particular purpose warrants by the sale that it is reasonably fit for that purpose.

History: En. Sec. 2377, Civ. C. 1895; re-en. Sec. 5110, Rev. C. 1907; re-en. Sec. 7613, R.C.M. 1921; Cal. Civ. C. Sec. 1770; Field Civ. C. Sec. 884; re-en. Sec. 7613, R.C.M. 1935; R.C.M. 1947, 74-316.

Cross-References

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-217. Warranty when thing cannot be examined by buyer. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer thereby warrants that it is sound and merchantable.

History: En. Sec. 2378, Civ. C. 1895; re-en. Sec. 5111, Rev. C. 1907; re-en. Sec. 7614, R.C.M. 1921; Cal. Civ. C. Sec. 1771; Field Civ. C. Sec. 885; re-en. Sec. 7614, R.C.M. 1935; R.C.M. 1947, 74-317.

Cross-References

Express warranties by affirmation, promise, description, sample, 30-2-313.

Implied warranty — merchantability — usage of trade, 30-2-314.

Implied warranty — fitness for particular purpose, 30-2-315.

30-11-218. Warranty that trademark is genuine. One who sells or agrees to sell any article to which there is affixed or attached a trademark thereby warrants that trademark to be genuine and lawfully used.

History: En. Sec. 2379, Civ. C. 1895; re-en. Sec. 5112, Rev. C. 1907; re-en. Sec. 7615, R.C.M. 1921; Cal. Civ. C. Sec. 1772; Field Civ. C. Sec. 886; re-en. Sec. 7615, R.C.M. 1935; R.C.M. 1947, 74-318.

Cross-References

Trademarks, Title 30, ch. 13, part 3.

30-11-219. Warranty of truth of other marks. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof or the place where it was in whole or in part produced, manufactured, or prepared thereby warrants the truth thereof.

History: En. Sec. 2380, Civ. C. 1895; re-en. Sec. 5113, Rev. C. 1907; re-en. Sec. 7616, R.C.M. 1921; Cal. Civ. C. Sec. 1773; Field Civ. C. Sec. 887; re-en. Sec. 7616, R.C.M. 1935; R.C.M. 1947, 74-319.

Cross-References

Express warranties by affirmation, promise, description, sample, 30-2-313.

30-11-220. Warranty on sale of written instrument. One who sells or agrees to sell an instrument purporting to bind anyone to the performance of any act thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto where that is material, the extinction of its obligations, or its invalidity for any cause.

History: En. Sec. 2381, Civ. C. 1895; re-en. Sec. 5114, Rev. C. 1907; re-en. Sec. 7617, R.C.M. 1921; Cal. Civ. C. Sec. 1774; Field Civ. C. Sec. 888; re-en. Sec. 7617, R.C.M. 1935; R.C.M. 1947, 74-320.

30-11-221. Warranty on sale of goodwill. One who sells the goodwill of a business thereby warrants that he will not endeavor to draw off any of the customers.

History: En. Sec. 2383, Civ. C. 1895; re-en. Sec. 5116, Rev. C. 1907; re-en. Sec. 7619, R.C.M. 1921; Cal. Civ. C. Sec. 1776; Field Civ. C. Sec. 890; re-en. Sec. 7619, R.C.M. 1935; R.C.M. 1947, 74-322.

Cross-References

Goodwill of business, 30-13-121.

Goodwill transferable, 30-13-122.

30-11-222. Warranty upon judicial sale. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

History: En. Sec. 2384, Civ. C. 1895; re-en. Sec. 5117, Rev. C. 1907; re-en. Sec. 7620, R.C.M. 1921; Cal. Civ. C. Sec. 1777; Field Civ. C. Sec. 891; re-en. Sec. 7620, R.C.M. 1935; R.C.M. 1947, 74-323.

Cross-References

Sale on execution, Title 25, ch. 13, part 7.

30-11-223. Effect of general warranty. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware or which were then easily discernible by him without the exercise of peculiar skill, but it extends to all other defects.

History: En. Sec. 2385, Civ. C. 1895; re-en. Sec. 5118, Rev. C. 1907; re-en. Sec. 7621, R.C.M. 1921; Cal. Civ. C. Sec. 1778; Field Civ. C. Sec. 892; re-en. Sec. 7621, R.C.M. 1935; R.C.M. 1947, 74-324.

Cross-References

Exclusion or modification of warranties, 30-2-316.

Cumulation and conflict of warranties express or implied, 30-2-317.

30-11-224. Uniform Commercial Code overrides. This part shall not apply to sales subject to the Uniform Commercial Code.

History: En. 74-325 by Sec. 11-150, Ch. 264, L. 1963; R.C.M. 1947, 74-325.

Cross-References

Uniform Commercial Code — sales, Title 30, ch. 2.

Part 3

Merchant's Rights

30-11-301. Definitions. (1) The term "merchant" as used in this part shall mean an owner or operator and the agent, consignee, employee, lessee, or officer of an owner or operator of any merchant's premises.

(2) The term "premises" shall mean any establishment or part thereof wherein merchandise is displayed, held, or offered for sale.

(3) The term "merchandise" shall mean any personal property capable of manual delivery displayed, held, or offered for sale by a merchant.

History: **En. Sec. 1, Ch. 11, L. 1957; R.C.M. 1947, 64-212.**

30-11-302. Obligation to keep merchandise in full view. Any merchant shall have the right to request any individual on his premises to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. No merchant shall be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request.

History: **En. Sec. 2, Ch. 11, L. 1957; R.C.M. 1947, 64-213.**

Cross-References

Theft, 45-6-301.

Part 4

Commission Merchants

Part Cross-References

Sale of fine art by dealer and rights of artist, Title 22, ch. 2, part 5.

Agricultural commodities generally, Title 80, ch. 4, part 4.

Warehousemen of agricultural commodities, Title 80, ch. 4, part 5.

30-11-401. Commission merchants to acknowledge receipt of property. Any persons doing business in this state as commission merchants or who shall receive from any person of this state agricultural or horticultural products or farm produce raised in this state to sell on commission shall immediately, upon receipt of such goods, send to the consignor or consignors a statement in writing showing what property has been received.

History: **En. Sec. 1, Ch. 2, L. 1909; re-en. Sec. 4183, R.C.M. 1921; re-en. Sec. 4183, R.C.M. 1935; R.C.M. 1947, 66-701.**

Cross-References

Sale to pay costs of storage, 70-6-411.

30-11-402. Statement to consignor on sale of property. Whenever any commission merchant or person receiving any property as mentioned in the preceding section shall sell the same or 25% thereof, such commission merchant or person shall immediately render a true statement to the consignor, showing what portion of such consignment has been sold, to whom sold, and the price received therefor.

History: **En. Sec. 2, Ch. 2, L. 1909; re-en. Sec. 4184, R.C.M. 1921; re-en. Sec. 4184, R.C.M. 1935; R.C.M. 1947, 66-702.**

Cross-References

Sale to pay costs of storage, 70-6-411.

30-11-403. Penalties for violation. Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of 30-11-401 and 30-11-402 or who shall make a false report or statement of the matters herein required, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding

$500 or imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 2, L. 1909; re-en. Sec. 4185, R.C.M. 1921; re-en. Sec. 4185, R.C.M. 1935; R.C.M. 1947, 66-703.

Part 5

Auction Sales and Auctioneers

30-11-501. Sale by auction defined. A sale by auction is a sale by public outcry to the highest bidder on the spot.

History: En. Sec. 2410, Civ. C. 1895; re-en. Sec. 5122, Rev. C. 1907; re-en. Sec. 7625, R.C.M. 1921; Cal. Civ. C. Sec. 1792; Field Civ. C. Sec. 896; re-en. Sec. 7625, R.C.M. 1935; Sec. 66-213, R.C.M. 1947; redes. 74-701 by Sec. 1, Ch. 263, L. 1977; R.C.M. 1947, 74-701.

30-11-502. Sale by auction. (1) In a sale by auction of goods by lot, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection does not apply to any bid at a forced sale.

History: En. Sec. 2-328, Ch. 264, L. 1963; Sec. 87A-2-328, R.C.M. 1947; amd. and redes. 74-702 by Sec. 2, Ch. 263, L. 1977; R.C.M. 1947, 74-702.

Cross-References

Highway equipment by bid, 18-6-103.

Firm offers, 30-2-205.

Enforcement of lien — sale (agisters' lien), 71-3-1203.

Enforcement of lien (hotel lien), 71-3-1402.

Sale of confiscated birds and animals, 87-1-511.

30-11-503. Sale under written conditions. When a sale by auction is made upon written or printed conditions, those conditions cannot be modified by any oral declaration of the auctioneer except those for his own protection.

History: En. Sec. 2413, Civ. C. 1895; re-en. Sec. 5125, Rev. C. 1907; re-en. Sec. 7628, R.C.M. 1921; Cal. Civ. C. Sec. 1795; Field Civ. C. Sec. 899; re-en. Sec. 7628, R.C.M. 1935; Sec. 66-216, R.C.M. 1947; amd. and redes. 74-703 by Sec. 3, Ch. 263, L. 1977; R.C.M. 1947, 74-703.

Cross-References

What contracts must be in writing, 28-2-903.

30-11-504. Auctioneer's memorandum of sale. When property is sold by auction, an entry made by the auctioneer in his sale book at the time of the sale specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer binds both the parties in the same manner as if made by themselves.

History: En. Sec. 2416, Civ. C. 1895; re-en. Sec. 5128, Rev. C. 1907; re-en. Sec. 7631, R.C.M. 1921; Cal. Civ. C. Sec. 1798; Field Civ. C. Sec. 902; re-en. Sec 7631, R.C.M. 1935; Sec. 66-219, R.C.M. 1947; amd. and redes. 74-704 by Sec. 4, Ch. 263, L. 1977; R.C.M. 1947, 74-704.

Cross-References

What contracts must be in writing, 28-2-903.

Certificate of sale, 87-1-512.

30-11-505. Book of sales. (1) Each auctioneer must keep a book and enter all sales showing the name of the owner of the goods sold, to whom sold, the amount paid, and the date of each sale.

(2) The book must be open for inspection by interested persons during normal business hours.

History: En. Sec. 3424, Pol. C. 1895; re-en. Sec. 2132, Rev. C. 1907; re-en. Sec. 4155, R.C.M. 1921; Cal. Pol. C. Sec. 3306; re-en. Sec. 4155, R.C.M. 1935; Sec. 66-211, R.C.M. 1947; amd. and redes. 74-705 by Sec. 5, Ch. 263, L. 1977; R.C.M. 1947, 74-705.

Cross-References

Certificate of sale, 87-1-512.

30-11-506. Auctioneer's authority from the seller. An auctioneer, in the absence of special authority or usage, has authority from the seller only as follows:

(1) to sell by public auction to the highest bidder;

(2) to sell for cash only, except for articles usually sold on credit at auction;

(3) to warrant as an agent pursuant to 28-10-421;

(4) to prescribe reasonable rules and terms of sale;

(5) to deliver the thing sold upon payment of the price;

(6) to collect the price; and

(7) to do whatever else is necessary, proper, and usual in the ordinary course of business for effecting these purposes.

History: En. Sec. 3160, Civ. C. 1895; re-en. Sec. 5461, Rev. C. 1907; re-en. Sec. 7976, R.C.M. 1921; Cal. Civ. C. Sec. 2362; Field Civ. C. Sec. 1264; re-en. Sec. 7976, R.C.M. 1935; Sec. 66-201, R.C.M. 1947; amd. and redes. 74-706 by Sec. 6, Ch. 263, L. 1977; R.C.M. 1947, 74-706.

30-11-507. Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of sale as prescribed in 30-11-504.

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R.C.M. 1921; Cal. Civ. C. Sec. 2363; Field Civ. C. Sec. 1265; re-en. Sec. 7977, R.C.M. 1935; amd. Sec. 11-145, Ch. 264, L. 1963; Sec. 66-202, R.C.M. 1947; amd. and redes. 74-707 by Sec. 7, Ch. 263, L. 1977; R.C.M. 1947, 74-707.

30-11-508. Auctioneer — authority and bond. Any citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state after giving a bond in accordance with the provisions of this part for the faithful performance of his duties.

History: En. Sec. 3400, Pol. C. 1895; re-en. Sec. 2119, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1921; re-en. Sec. 4147, R.C.M. 1921; Cal. Pol. C. Sec. 3284; re-en. Sec. 4147, R.C.M. 1935; Sec. 66-203, R.C.M. 1947; amd. and redes. 74-708 by Sec. 8, Ch. 263, L. 1977; R.C.M. 1947, 74-708.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

30-11-509. Reciprocal privileges to nonresident auctioneers. The residency requirements required by this state for an auctioneer are waived for the citizens of any other state to the same extent that the home state of the applicant waives residency requirements for the citizens of this state.

History: En. Sec. 1, Ch. 173, L. 1963; Sec. 66-203.1, R.C.M. 1947; amd. and redes. 74-709 by Sec. 9, Ch. 263, L. 1977; R.C.M. 1947, 74-709.

30-11-510. Bond and sureties — approval — filing. (1) Bond must be payable to the state, with one or more sureties, in the sum of $5,000 and approved by the county clerk of the county in which the auctioneer resides and filed in his office.

(2) If the auctioneer is not a resident, the bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R.C.M. 1921; Cal. Pol. C. Sec. 3285; re-en. Sec. 4148, R.C.M. 1935; amd. Sec. 2, Ch. 173, L. 1963; Sec. 66-204, R.C.M. 1947; amd. and redes. 74-710 by Sec. 10, Ch. 263, L. 1977; R.C.M. 1947, 74-710.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

30-11-511. Auctioneers ex officio. (1) In any county without an auctioneer, the sheriff or a constable thereof is ex officio auctioneer and is permitted to sell any property at public auction.

(2) He is liable on his official bond for any delinquency as the ex officio auctioneer.

History: En. Sec. 3407, Pol. C. 1895; re-en. Sec. 2126, Rev. C. 1907; re-en. Sec. 4149, R.C.M. 1921; Cal. Pol. C. Sec. 3291; re-en. Sec. 4149, R.C.M. 1935; amd. Sec. 7, Ch. 253, L. 1975; Sec. 66-205, R.C.M. 1947; amd. and redes. 74-711 by Sec. 11, Ch. 263, L. 1977; R.C.M. 1947, 74-711.

30-11-512. Assistant — who may act and when. (1) An auctioneer, in the event of inability to attend an auction by reason of sickness, the performance of a duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ an agent or employee to hold the auction in his name and behalf.

(2) The employee shall file with the county clerk of the county an affidavit swearing to faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

History: En. Sec. 3408, Pol. C. 1895; re-en. Sec. 2127, Rev. C. 1907; re-en. Sec. 4150, R.C.M. 1921; Cal. Pol. C. Sec. 3292; re-en. Sec. 4150, R.C.M. 1935; Sec. 66-206, R.C.M. 1947; amd. and redes. 74-712 by Sec. 12, Ch. 263, L. 1977; R.C.M. 1947, 74-712.

30-11-513. Auctioneers to designate one place of business — partners. (1) An auctioneer shall designate in writing with the county clerk one place at which he will conduct auctions within any city.

(2) He shall designate in the same document his partners, if any, in the business.

(3) He may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets.

History: En. Sec. 3420, Pol. C. 1895; re-en. Sec. 2128, Rev. C. 1907; re-en. Sec. 4151, R.C.M. 1921; Cal. Pol. C. Sec. 3302; re-en. Sec. 4151, R.C.M. 1935; Sec. 66-207, R.C.M. 1947; amd. and redes. 74-713 by Sec. 13, Ch. 263, L. 1977; R.C.M. 1947, 74-713.

30-11-514. Penalty. A person convicted of violating a provision of this part shall be fined no more than $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition he shall be liable for damages incurred by any aggrieved party by reason of such violation.

History: En. 74-714 by Sec. 14, Ch. 263, L. 1977; R.C.M. 1947, 74-714.

30-11-515. Enforcement. The provisions of this part shall be enforced by the department of commerce and the county attorney of the county in which the violation occurred.

History: En. 74-715 by Sec. 15, Ch. 263, L. 1977; R.C.M. 1947, 74-715; amd. Sec. 2, Ch. 274, L. 1981.

30-11-516. Powers of cities and towns. Towns and cities may tax, license, and regulate persons, firms, associations, corporations, or other legal entities engaging in or desiring to engage in public auctions and may require a license and charge a fee therefor. Towns and cities may provide penalties for violations of the requirements.

History: En. Sec. 11, Ch. 111, L. 1955; amd. Sec. 1, Ch. 225, L. 1959; Sec. 66-230, R.C.M. 1947; amd. and redes. 74-716 by Sec. 16, Ch. 263, L. 1977; R.C.M. 1947, 74-716.

Cross-References

Licensing discrimination by governmental agency prohibited, 49-3-204.

Part 6

Factors

Part Cross-References

Sale of fine art by art dealer, Title 22, ch. 2, part 5.

Agency, Title 28, ch. 10.

30-11-601. Factor defined. A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him and is vested by the latter with the possession or control of the property or authorized to receive payment therefor from the purchaser.

History: En. Sec. 2750, Civ. C. 1895; re-en. Sec. 5290, Rev. C. 1907; re-en Sec. 7805, R.C.M. 1921; Cal. Civ. C. Sec. 2026; Based on Field Civ. C. Sec. 1045; re-en. 7805, R.C.M. 1935; R.C.M. 1947, 2-401.

Cross-References

Termination at will, 39-2-503.

30-11-602. Obedience required from factor. A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so and of the time and place of sale, and proceeding in all respects as a pledgee.

History: En. Sec. 2751, Civ. C. 1895; re-en. Sec. 5291, Rev. C. 1907; re-en Sec. 7806, R.C.M. 1921; Cal. Civ. C. Sec. 2027; Based on Field Civ. C. Sec. 1046; re-en. 7806, R.C.M. 1935; R.C.M. 1947, 2-402.

Cross-References

Agent not to exceed actual authority, 28-10-301.

Employee must obey employer, 39-2-404.

30-11-603. Sales on credit. A factor may sell property consigned to him on such credit as is usual but, having once agreed with the purchaser upon the terms of credit, may not extend it.

History: En. Sec. 2752, Civ. C. 1895; re-en. Sec. 5292, Rev. C. 1907; re-en Sec. 7807, R.C.M. 1921; Cal. Civ. C. Sec. 2028; Based on Field Civ. C. Sec. 1047; re-en. 7807, R.C.M. 1935; R.C.M. 1947, 2-403.

Cross-References

What included in authority to sell personal property, 28-10-421.

What included in authority to sell real property, 28-10-422.

Authority of agent to sell to receive price, 28-10-423.

30-11-604. Liability of factor under guaranty commission. A factor who charges his principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due as if it were a debt of his own and not as a mere guarantor for the purchaser. He does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

History: En. Sec. 2753, Civ. C. 1895; re-en. Sec. 5293, Rev. C. 1907; re-en Sec. 7808, R.C.M. 1921; Cal. Civ. C. Sec. 2029; Based on Field Civ. C. Sec. 1048; re-en. 7808, R.C.M. 1935; R.C.M. 1947, 2-404.

Cross-References

When agent responsible to third persons as a principal, 28-10-702.

Guaranty defined, 28-11-101.

Knowledge or consent of principal not required, 28-11-102.

30-11-605. Principal's consent needed to relieve factor from liability. A factor who receives property for sale under a general agreement or usage to guarantee the sales or the remittance of the proceeds cannot relieve himself from responsibility therefor without the consent of his principal.

History: **En. Sec. 2754, Civ. C. 1895; re-en. Sec. 5294, Rev. C. 1907; re-en Sec. 7809, R.C.M. 1921; Cal. Civ. C. Sec. 2030; Based on Field Civ. C. Sec. 1049; re-en. 7809, R.C.M. 1935; R.C.M. 1947, 2-405.**

30-11-606. Authority of factor. In addition to the authority of agents in general, a factor has actual authority for his principal, unless specially restricted, to:

(1) insure property consigned to him uninsured;

(2) sell on credit anything entrusted to him for sale, except such things as it is contrary to usage to sell on credit, but not to pledge, mortgage, or barter the same; and

(3) delegate his authority to his partner or servant but not to any person in an independent employment.

History: **En. Sec. 3171, Civ. C. 1895; re-en. Sec. 5464, Rev. C. 1907; re-en Sec. 7979, R.C.M. 1921; Cal. Civ. C. Sec. 2368; Field Civ. C. Sec. 1267; re-en. 7979, R.C.M. 1935; R.C.M. 1947, 2-406.**

Cross-References

Agent not to exceed actual authority, 28-10-301.

Authority of agent, Title 30, ch. 10, part 4.

30-11-607. Ostensible authority. A factor has ostensible authority to deal with the property of his principal as his own in transactions with persons not having notice of the actual ownership.

History: **En. Sec. 3172, Civ. C. 1895; re-en. Sec. 5465, Rev. C. 1907; re-en Sec. 7980, R.C.M. 1921; Cal. Civ. C. Sec. 2369; Field Civ. C. Sec. 1268; re-en. 7980, R.C.M. 1935; R.C.M. 1947, 2-407.**

Cross-References

Actual versus ostensible agency, 28-10-103.

What authority agent has, 28-10-401.

Ostensible authority defined, 28-10-403.

Part 7

Canceled Dealership Contracts Repurchase Requirements

30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in 61-1-314;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in Title 61, chapter 1, part 1, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair parts;

(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.

(5) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers.

History: En. Sec. 1, Ch. 338, L. 1983; amd. Sec. 1, Ch. 297, L. 1985; amd. Sec. 1, Ch. 51, L. 1989.

30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items held by the dealer at the time of cancellation, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

History: En. Sec. 2, Ch. 338, L. 1983; amd. Sec. 2, Ch. 297, L. 1985; amd. Sec. 8, Ch. 522, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a), after "items", deleted "except repair parts" and after "cancellation" inserted "plus cost of freight to return the inventory"; in (1)(b) and (2)(b) increased percentage from 85% to 100% and after "catalog" inserted "or the last catalog or price list in which the repair part was listed as"; in (1)(b), after "cancellation", inserted "plus cost of freight to return the repair parts"; and in (3), before "return", substituted "within 60 days of the" for "upon". Amendment effective April 22, 1991.

Cross-References

"Security agreement" defined, 30-9-105.

30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resaleable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if he has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

History: **En. Sec. 3, Ch. 338, L. 1983.**

30-11-704. Repurchase of inventory of deceased retailer or wholesaler. If the retailer, wholesaler, or majority stockholder in a corporation operating as a retailer or wholesaler entitled to payment under this part dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in 30-11-702.

History: **En. Sec. 4, Ch. 338, L. 1983; amd. Sec. 3, Ch. 297, L. 1985.**

Cross-References

"Heirs" and "Devisees" defined, 72-1-103.

30-11-705 through 30-11-710 reserved.

30-11-711. Rights not affected. (1) This part does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's or wholesaler's account any amount previously credited or paid as a discount incident to the retailer's or wholesaler's purchase of the goods.

(2) This part does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer or wholesaler.

History: **En. Sec. 5, Ch. 338, L. 1983; amd. Sec. 4, Ch. 297, L. 1985.**

Cross-References

"Security interest" defined, 30-1-201.

30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs.

History: **En. Sec. 6, Ch. 338, L. 1983; amd. Sec. 5, Ch. 297, L. 1985.**

30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either his contract remedies or the remedy provided in 30-11-702. An election to pursue his contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in 30-11-702 as to any inventory not covered by contract.

History: **En. Sec. 7, Ch. 338, L. 1983; amd. Sec. 6, Ch. 297, L. 1985.**

Cross-References

Breach of contract — damages, 27-1-311.

Part 8

Termination, Cancellation, Nonrenewal, or Substantial Alteration of Farm Implements Dealership Agreements

Part Cross-References

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

30-11-801. Definitions. As used in this part, the following definitions apply:

(1) “Community of interest” means a continuing financial interest that the grantor and grantee have in common.

(2) “Dealer” means a person who is a grantee of a farm implements dealership situated in this state.

(3) “Dealership” means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) “Department” means the department of commerce established in 2-15-1801.

(5) “Designated family member” means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) “Designated successor” means a person designated in writing by the retiring dealer to succeed him in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer’s property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(7) “Farm implement” means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(8) (a) “Good cause”, when used in 30-11-801 through 30-11-803 and 30-11-811, means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon him by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in 30-11-804 through 30-11-809, means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

History: En. Sec. 1, Ch. 45, L. 1985; amd. Sec. 1, Ch. 522, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definitions of Department, designated family member, and designated successor; and in definition of good cause inserted "when used in 30-11-801 through 30-11-803 and 30-11-811" and inserted (b) defining good cause when used in 30-11-804 through 30-11-809. Amendment effective April 22, 1991.

30-11-802. Cancellation and alteration of dealerships. No grantor may, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

History: En. Sec. 2, Ch. 45, L. 1985.

Cross-References

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

30-11-803. Notice of termination or change in dealership. (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy such default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

History: En. Sec. 3, Ch. 45, L. 1985.

30-11-804. Transfer. A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated member or members of the family of the dealer, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

History: En. Sec. 2, Ch. 522, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 522, L. 1991, provided that this section is effective April 22, 1991.

30-11-805. Refusal to honor succession to ownership — notice required. (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to 30-11-806, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

History: En. Sec. 3, Ch. 522, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 522, L. 1991, provided that this section is effective April 22, 1991.

30-11-806. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period provided for in 30-11-805, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

History: En. Sec. 4, Ch. 522, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 522, L. 1991, provided that this section is effective April 22, 1991.

30-11-807. Written designation of succession unaffected. Sections 30-11-804 through 30-11-809 do not preclude a dealer from designating any person as his successor by written instrument filed with the grantor.

History: En. Sec. 5, Ch. 522, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 522, L. 1991, provided that this section is effective April 22, 1991.

30-11-808. Illegal cancellation of dealership based on natural disaster. A grantor may not attempt or threaten to terminate, cancel, fail to renew, or substantially change the circumstances of a dealership if the attempt or threat is based on the results of a natural disaster, including a sustained drought, in the dealership market area.

History: En. Sec. 6, Ch. 522, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 522, L. 1991, provided that this section is effective April 22, 1991.

30-11-809. Civil damages. A dealer suffering pecuniary loss due to a violation of 30-11-804 through 30-11-809 who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

History: En. Sec. 7, Ch. 522, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 522, L. 1991, provided that this section is effective April 22, 1991.

30-11-810 reserved.

30-11-811. Action for damages and injunctive relief. If any grantor violates this part, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

History: En. Sec. 4, Ch. 45, L. 1985.

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

Specific and preventive relief, Title 27, ch. 1, part 4.

Injunctions, Title 27, ch. 19.

Enforcement of obligations arising by operation of law, 28-1-203.

CHAPTER 12

WEIGHTS, MEASURES, STANDARDS, AND LABELING

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30-12-1005. Possession as evidence.
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Part 1

General Provisions

30-12-101. Definitions. Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

(2) "Commerce", "trade", or "commercial" means a monetary or value exchange between parties for merchandise or services.

(3) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(4) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(5) "Cord", when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Intrastate commerce" means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(8) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

(10) "Sell" and "sale" include but are not limited to barter and exchange.

(11) "Ton" means a unit of 2,000 pounds avoirdupois weight.

(12) "Weight", when used in connection with any commodity, means net weight.

(13) "Weight", "measure", and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. None of the provisions of parts 1 through 5 apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them. The terms do not include time measuring devices by which products or services are sold.

History: En. Sec. 1, Ch. 99, L. 1969; amd. Sec. 146, Ch. 431, L. 1975; R.C.M. 1947, 90-153; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 442, L. 1989.

Cross-References

Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-102. Systems of weights and measures. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems may be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

History: En. Sec. 2, Ch. 99, L. 1969; R.C.M. 1947, 90-154; amd. Sec. 2, Ch. 442, L. 1989.

Cross-References

Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-103. State standards of weight and measure. Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by this state for use as state standards are, when they have been certified as being satisfactory for use as such by the national institute of standards and technology, the state standards of weight and measure. The state standards must be kept in a safe and suitable place in the office or laboratory of the department. They may not be removed from there except for repairs or for certification.

History: En. Sec. 4, Ch. 99, L. 1969; amd. Sec. 147, Ch. 431, L. 1975; R.C.M. 1947, 90-156; amd. Sec. 3, Ch. 442, L. 1989.

Cross-References

General powers and duties of Department, 30-12-201.

30-12-104. Field standards and equipment. In addition to the state standards provided for in 30-12-103, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of parts 1 through 5 of this chapter. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

History: En. Sec. 5, Ch. 99, L. 1969; R.C.M. 1947, 90-157.

30-12-105. Use of metric sizes in sale of commodities — department to make rules. Notwithstanding any other provision, metric sizes as defined by the department of commerce by rule will be permitted, provided there is compliance with all labeling requirements of the state of Montana.

History: En. Sec. 1, Ch. 75, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 133, Ch. 575, L. 1981.

30-12-106. Fractional parts — construction of contracts. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in 30-12-101 and 30-12-102, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

History: En. Sec. 33, Ch. 99, L. 1969; R.C.M. 1947, 90-185; MCA 1979, 30-12-501; redes. 30-12-106 by Code Commissioner, 1981.

Cross-References

Sale by net weight, 30-12-306.

Part 2

Authority of Department of Commerce

Part Cross-References

Offenses and penalties, 30-12-504.

30-12-201. General powers and duties of department. The department has the custody of the state standards of weight and measure and of the other standards and equipment provided for by parts 1 through 5 and shall keep accurate records of them. The department shall enforce the provisions of parts 1 through 5. It shall supervise the weights and measures used in commerce or trade that are offered for sale, sold, or in use in this state.

History: En. Sec. 7, Ch. 99, L. 1969; amd. Sec. 148, Ch. 431, L. 1975; R.C.M. 1947, 90-159; amd. Sec. 4, Ch. 442, L. 1989.

Cross-References

State standards of weight and measure, 30-12-103.

30-12-202. Specific powers and duties of department — rules. (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, which rules have the effect of law. These rules may include:

(a) schedules of fees for testing and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the voluntary registration of servicemen and service agencies.

(2) These rules shall include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national institute of standards and technology and published in national institute of standards and technology Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except insofar as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus is considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus are considered to be "incorrect".

History: En. Sec. 8, Ch. 99, L. 1969; amd. Sec. 149, Ch. 431, L. 1975; R.C.M. 1947, 90-160; amd. Sec. 5, Ch. 442, L. 1989.

Cross-References

Method of sale of commodities — general, 30-12-301.

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

30-12-203. Licensing of weighing devices. (1) No person shall knowingly operate or use any unlicensed weighing devices in trade or commerce for ascertaining the weight of any commodity.

(2) Such license shall be obtained by making application to the department upon blank forms to be provided by the division of weights and measures. Each license should include at least one inspection per year.

(3) Every application shall be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	$ 5.00
500 pounds through 1,999 pounds	8.00
2,000 pounds through 7,999 pounds	15.00
8,000 pounds through 60,000 pounds	40.00
60,001 pounds or more	70.00

(4) The capacity of a weighing device shall be determined by the manufacturer's rated capacity.

(5) All licenses shall be annual and shall expire on December 31.

(6) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid before July 1 of the year in which the license fee is due. In addition, any person failing to pay the renewal license fee before July 1 shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures until the renewal fee and late renewal fee are paid.

History: En. 90-160.1 by Sec. 1, Ch. 244, L. 1973; R.C.M. 1947, 90-160.1; amd. Sec. 1, Ch. 591, L. 1983.

Cross-References

Licensing — discrimination, 49-3-204.

30-12-204. Testing at state-supported institutions. The department shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting its findings in writing to the executive officer of the institution concerned.

History: En. Sec. 9, Ch. 99, L. 1969; amd. Sec. 150, Ch. 431, L. 1975; R.C.M. 1947, 90-161.

30-12-205. General testing. (1) When not otherwise provided by law, the department may inspect and test to ascertain if they are correct all weights and measures kept, offered, or exposed for sale.

(2) The department, within a 12-month period or less frequently if in accordance with a schedule issued by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) in determining the weight, measurement, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or of count; or

(b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count.

(3) With respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of the devices. The lots of which the samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

(4) An itinerant peddler or hawker using weights and measures shall register his name and address with the department, in order that his equipment can be tested in accordance with the provisions of this law.

History: En. Sec. 10, Ch. 99, L. 1969; amd. Sec. 151, Ch. 431, L. 1975; R.C.M. 1947, 90-162.

Cross-References

Itinerant merchants, Title 80, ch. 3, part 7.

30-12-206. Investigations. The department shall investigate complaints made to it concerning violations of parts 1 through 5. It shall, upon its own initiative, conduct those investigations it considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of parts 1 through 5 and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

History: En. Sec. 11, Ch. 99, L. 1969; amd. Sec. 152, Ch. 431, L. 1975; R.C.M. 1947, 90-163.

30-12-207. Inspection of packages. (1) The department shall adopt by rule and implement a schedule to weigh or measure and inspect packages or amounts of commodities kept, offered, exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, exposed for sale, or sold in accordance with law. The schedule adopted must provide for random inspection of packages and commodities at randomly selected inspection sites. When those packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of that lot.

(2) A person may not:

(a) sell or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless the package or amount of commodity has been brought into full compliance with all legal requirements; or

(b) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the department.

History: En. Sec. 12, Ch. 99, L. 1969; amd. Sec. 153, Ch. 431, L. 1975; R.C.M. 1947, 90-164; amd. Sec. 6, Ch. 442, L. 1989.

Cross-References

Offenses and penalties, 30-12-504.

30-12-208. Stop-use, stop-removal, and removal orders. The department may issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being or susceptible of being commercially used and issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery whenever in the course of enforcement of parts 1 through 5 it considers it necessary or expedient to issue those orders. A person may not use, remove from the premises specified, or fail to remove from the premises specified any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under this section.

History: En. Sec. 13, Ch. 99, L. 1969; amd. Sec. 154, Ch. 431, L. 1975; R.C.M. 1947, 90-165.

30-12-209. Disposition of correct and incorrect apparatus. (1) The department shall approve for use and seal or mark with appropriate devices those weights and measures which it finds upon inspection and test to be "correct" as defined in 30-12-202 and shall reject and mark or tag as "rejected" those weights and measures which it finds, upon inspection or test, to be "incorrect" as defined in 30-12-202 but which in its best judgment are susceptible of satisfactory repair.

(2) The department shall condemn, and may seize and destroy, weights and measures found to be incorrect which, in its best judgment, are not susceptible of satisfactory repair.

(3) Weights and measures that have been rejected may be confiscated and may be destroyed by the department if not corrected as required by 30-12-211 or if used or disposed of contrary to the requirements of 30-12-211.

(4) Sealing or marking are not required with respect to those weights and measures which may be exempted therefrom by a rule of the department issued under 30-12-202.

History: En. Sec. 14, Ch. 99, L. 1969; amd. Sec. 155, Ch. 431, L. 1975; R.C.M. 1947, 90-166.

Cross-References

Offenses and penalties, 30-12-504.

30-12-210. Police powers. In enforcing the provisions of parts 1 through 5 or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold.

History: En. Sec. 15, Ch. 99, L. 1969; amd. Sec. 156, Ch. 431, L. 1975; R.C.M. 1947, 90-167.

Cross-References

Offenses and penalties, Title 30, ch. 12, part 5.

30-12-211. Duty of owners of incorrect apparatus. (1) Weights and measures that have been rejected under the authority of the department shall remain subject to the control of the department until suitable repair or disposition of them has been made as required by this section.

(2) The owner of rejected weights and measures shall correct them within 30 days or a longer period as may be authorized by the department.

(3) In place of this, the owner may dispose of them, but only in a manner specifically authorized by the department.

(4) Weights and measures that have been rejected may not again be used commercially until they have been officially reexamined and found to be correct, or until specific written permission for that use is issued by the department, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person properly registered to perform those acts under a rule issued by the department for the registration of weights and measures servicemen and service agencies.

History: En. Sec. 17, Ch. 99, L. 1969; amd. Sec. 157, Ch. 431, L. 1975; R.C.M. 1947, 90-169.

Cross-References

Offenses and penalties, Title 30, ch. 12, part 5.

30-12-212. Noncommercial inspections — fees. Subject to the availability of resources and upon payment of a fee commensurate with the costs of inspection, the department may inspect noncommercial weighing and measuring devices. Fees collected under this section must be deposited in the state general fund.

History: En. Sec. 7, Ch. 442, L. 1989.

Part 3

Method of Sale of Commodities

30-12-301. Method of sale of commodities — general. (1) Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in parts 1 through 5, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count. Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate information as to the quantity of commodity sold. This section does not apply to:

(a) commodities when sold for immediate consumption on the premises where sold;

(b) vegetables when sold by the head or bunch;

(c) commodities in containers standardized by a law of this state or by federal law;

(d) commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or

(f) unprocessed vegetable and animal fertilizer when sold by cubic measure.

(2) The department may adopt reasonable rules necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: En. Sec. 18, Ch. 99, L. 1969; amd. Sec. 158, Ch. 431, L. 1975; R.C.M. 1947, 90-170.

Cross-References

Local government — authority to weigh, measure, and regulate certain commodities, 7-21-4203.

Specific powers and duties of Department — rules, 30-12-202.

30-12-302. Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions. (1) Except as otherwise provided in parts 1 through 5, a commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package definite, plain, and conspicuous declarations of:

(a) the identity of the commodity in the package unless it can easily be identified through the wrapper or container;

(b) the net quantity of the contents in terms of weight, measure, or count; and

(c) in the case of any package kept, offered, or exposed for sale or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rules adopted by the department.

(2) In connection with the declaration required under subsection (1)(b), neither the qualifying term "when packed" nor words of similar import nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in a package may be used.

(3) Under subsection (1)(b), the department shall by rule establish:

(a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure;

(b) exemptions as to small packages; and

(c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits sold in conformance with part 4.

History: En. Sec. 19, Ch. 99, L. 1969; amd. Sec. 159, Ch. 431, L. 1975; R.C.M. 1947, 90-171.

Cross-References

Specific powers and duties of Department — rules, 30-12-202.

30-12-303. Declarations of unit price on random packages. In addition to the declarations required by 30-12-302, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: En. Sec. 20, Ch. 99, L. 1969; R.C.M. 1947, 90-172.

30-12-304. Misleading packages. A commodity in package form may not be wrapped or in a container made, formed, or filled so as to mislead the purchaser as to the quantity of the contents of the package. The contents of a container may not fall below a reasonable standard of fill which may be prescribed for that commodity by the department.

History: En. Sec. 21, Ch. 99, L. 1969; amd. Sec. 160, Ch. 431, L. 1975; R.C.M. 1947, 90-173.

Cross-References

Offenses and penalties, 30-12-504.

30-12-305. Advertising packages for sale. Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as required by law or regulation to appear on the package, provided:

(1) that where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement; and

(2) that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed", "minimum", "not less than", or any other terms of similar import or any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in the package.

History: En. Sec. 22, Ch. 99, L. 1969; R.C.M. 1947, 90-174.

30-12-306. Sale by net weight. When a commodity is sold on the basis of weight, the net weight of the commodity shall be employed and all contracts concerning commodities shall be so construed.

History: **En. Sec. 23, Ch. 99, L. 1969; amd. Sec. 161, Ch. 431, L. 1975; R.C.M. 1947, 90-175.**

Cross-References
Fractional parts of unit and value — construction of contracts, 30-12-106.

30-12-307. Misrepresentation of price. Whenever any commodity or service is sold or is offered, exposed, or advertised for sale by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cents.

History: **En. Sec. 24, Ch. 99, L. 1969; R.C.M. 1947, 90-176.**

Cross-References
Offenses and penalties, 30-12-504.

Part 4

Sale of Specific Commodities

30-12-401. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood, except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight and the quantity representation may be the total weight of the product or combination and a quantity representation need not be made for each of the several elements of the product or combination.

History: **En. Sec. 25, Ch. 99, L. 1969; R.C.M. 1947, 90-177.**

Cross-References
Method of sale of commodities — general, 30-12-301.

30-12-402. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread produced or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh 1/2 pound, 1 pound, 1 1/2 pounds, or a multiple of 1 pound, avoirdupois weight, within reasonable variations or tolerances that shall be adopted by rules of the department. This section does not apply to biscuits, buns, or rolls weighing 8 ounces or less or to "stale bread" sold and expressly represented at the time of sale as such.

History: En. Sec. 26, Ch. 99, L. 1969; amd. Sec. 162, Ch. 431, L. 1975; R.C.M. 1947, 90-178.

Cross-References

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

Flour and bread, Title 50, ch. 34.

30-12-403. Butter, oleomargarine, and margarine. Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight and only in units of 1/4 pound, 1/2 pound, 1 pound, or multiples of 1 pound, avoirdupois weight.

History: En. Sec. 27, Ch. 99, L. 1969; R.C.M. 1947, 90-179.

Cross-References

Manufactured dairy products, Title 81, ch. 22.

30-12-404. Fluid dairy products. All fluid dairy products including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk shall be packaged for retail sale only in units of less than 1 gill, units of 1 gill, 1/2 liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart, 1/2 gallon, 3 liquid quarts, 1 gallon, 1 1/2 gallons, 2 gallons, 2 1/2 gallons, or multiples of 1 gallon.

History: En. Sec. 28, Ch. 99, L. 1969; amd. Sec. 1, Ch. 76, L. 1977; R.C.M. 1947, 90-180.

30-12-405. Flour, cornmeal, and hominy grits. When in package form and when packed, kept, offered, or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, cornmeal, and hominy grits shall be packaged only in units of 2, 5, 10, 25, 50, or 100 pounds, avoirdupois weight. Packages in units of less than 2 pounds or more than 100 pounds shall be permitted.

History: En. Sec. 29, Ch. 99, L. 1969; R.C.M. 1947, 90-181.

Cross-References

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

Flour and bread, Title 50, ch. 34.

30-12-406. Bulk deliveries sold in terms of weight and delivered by vehicle. (1) When a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment and in clarity equal to type or printing:

(a) the name and address of the vendor;

(b) the name and address of the purchaser; and

(c) the net weight of the delivery expressed in pounds.

(2) If the net weight is derived from determinations of gross and tare weights, the gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity or shall be surrendered on demand to the department. If the department desires to retain it as evidence, it shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

History: En. Sec. 30, Ch. 99, L. 1969; amd. Sec. 163, Ch. 431, L. 1975; R.C.M. 1947, 90-182.

Cross-References

Method of sale of commodities — general, 30-12-301.

Sale by net weight, 30-12-306.

30-12-407. Furnace and stove oil. All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of 30-12-301. In the case of each delivery of such liquid fuel not in package form and in an amount greater than 10 gallons in the case of sale by liquid measure or 100 pounds in the case of sale by weight, there shall be rendered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and in clarity equal to type or printing, there shall be clearly stated:

(1) the name and address of the vendor;

(2) the name and address of the purchaser;

(3) the identity of the type of fuel comprising the delivery;

(4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered;

(5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and

(6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

History: En. Sec. 31, Ch. 99, L. 1969; R.C.M. 1947, 90-183.

Cross-References

Approved measure required for part delivery, 82-15-108.

Full compartment sales — approval of meter, 82-15-109.

Unlawful acts, 82-15-110.

30-12-408. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of 1/2 dry pint, 1 dry pint, or 1 dry quart.

History: En. Sec. 32, Ch. 99, L. 1969; amd. Sec. 164, Ch. 431, L. 1975; R.C.M. 1947, 90-184.

Cross-References

Method of sale of commodities — general, 30-12-301.

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

30-12-409. Sale of gasoline and distillates on other than gross volume basis unlawful — exception. (1) Except as provided in subsection (2) or in Title 82, chapter 15, part 1, the sale, barter, or exchange of gasoline and distillates on a temperature corrected basis or on any basis other than the gross volume of gasoline or distillate actually delivered is void. Any contract in violation of this section shall be unenforceable to the extent of the violation.

(2) Suppliers of gasoline and distillates shall offer Montana petroleum wholesale distributors the option to buy gasoline and distillates either by gross volume actually delivered or on the assumption that the temperature of the product is 60 degrees Fahrenheit or the centigrade equivalent. This purchaser option may be exercised only on an annual basis and may be applied only to single deliveries of 7,500 gallons or more or the metric equivalent. Any adjustments to volume during the temperature compensation process must be made in accordance with standards set under 82-15-103, 82-15-108, and 82-15-109. Purchasers who choose to exercise the option available under this subsection must be provided with invoice listings of both net and gross gallons.

(3) This section does not apply to the exchange or transfer of gasoline and distillates between refiners or transporters of petroleum or petroleum products.

History: En. 13-812 by Sec. 1, Ch. 198, L. 1975; amd. Sec. 1, Ch. 274, L. 1977; R.C.M. 1947, 13-812; amd. Sec. 1, Ch. 166, L. 1983.

Cross-References

Approved measure required for part delivery, 82-15-108.

Full compartment sales — approval of meter, 82-15-109.

Unlawful acts, 82-15-110.

Part 5

Offenses and Penalties

30-12-501. Renumbered 30-12-106 by Code Commissioner, 1981.

30-12-502. Hindering or obstructing officer — penalties. A person who hinders or obstructs the department in any way in the performance of its official duties is guilty of a misdemeanor and upon conviction shall be fined not less than $20 or more than $200 or imprisoned not more than 3 months or both fined and imprisoned.

History: En. Sec. 34, Ch. 99, L. 1969; amd. Sec. 165, Ch. 431, L. 1975; R.C.M. 1947, 90-186.

Cross-References

General powers and duties of Department, 30-12-201.

Police powers, 30-12-210.

30-12-503. Impersonation of officer — penalties. A person who in any way impersonates a person charged with enforcement of parts 1 through 5 by the department, by the use of its seal or a counterfeit of its seal or in any other manner, is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

History: En. Sec. 35, Ch. 99, L. 1969; amd. Sec. 166, Ch. 431, L. 1975; R.C.M. 1947, 90-187.

Cross-References

General powers and duties of Department, 30-12-201.

Police powers, 30-12-210.

Impersonating a public servant, 45-7-209.

30-12-504. Offenses and penalties. (1) A person may not:

(a) use or possess for the purpose of using for a commercial purpose specified in 30-12-205, sell, offer or expose for sale or hire, or possess for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) use or possess for the purpose of current use for a commercial purpose specified in 30-12-205 a weight or measure that does not bear a seal or mark specified in 30-12-209, unless that weight or measure has been exempted from testing by 30-12-205 or by a rule of the department issued under 30-12-202 or unless the device has been placed in service as provided by a rule of the department issued under 30-12-202. A person using weighing or measuring devices subject to parts 1 through 5 must report to the department, in writing, the number and location of the weighing or measuring device and must promptly report the installation of any new weighing or measuring device.

(c) dispose of a rejected or condemned weight or measure in a manner contrary to law or rule;

(d) remove from a weight or measure, contrary to law or rule, any tag, seal, or mark placed on it by the appropriate authority;

(e) sell or offer or expose for sale less than the quantity he represents of a commodity, thing, or service;

(f) take more than the quantity he represents of a commodity, thing, or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) keep for the purpose of sale, advertise or offer or expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law or rule;

(h) use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

(i) violate a provision of parts 1 through 5 or of the rules adopted under parts 1 through 5 for which a specific penalty is not prescribed.

(2) A person who violates, or who knowingly allows an employee or agent to violate, this section is guilty of a misdemeanor and upon a first conviction shall be fined not less than $20 or more than $200 or imprisoned for not more than 3 months or both fined and imprisoned. Upon a second or subsequent

conviction, he shall be fined not less than $50 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

History: En. Sec. 36, Ch. 99, L. 1969; amd. Sec. 167, Ch. 431, L. 1975; R.C.M. 1947, 90-188.

Cross-References

Inspection of packages, 30-12-207.
Police powers, 30-12-210.
Duty of owners of incorrect apparatus, 30-12-211.
Dispensing of drugs, Title 37, ch. 2, part 1.

30-12-505. Injunction. The department may apply to any court of competent jurisdiction for, and that court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining a person from violating any provision of parts 1 through 5 of this chapter.

History: En. Sec. 37, Ch. 99, L. 1969; amd. Sec. 168, Ch. 431, L. 1975; R.C.M. 1947, 90-189.

Cross-References

Injunctions generally, Title 27, ch. 19.
Police powers, 30-12-210.

30-12-506. Presumptive evidence. For the purposes of parts 1 through 5, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on is, in the absence of credible evidence to the contrary, presumptive proof of the regular use of that weight or measure or weighing or measuring device for commercial purposes and of the use by the person in charge of the building, enclosure, stand, or vehicle.

History: En. Sec. 38, Ch. 99, L. 1969; amd. Sec. 169, Ch. 431, L. 1975; R.C.M. 1947, 90-190.

Cross-References

Police powers, 30-12-210.

30-12-507. Validity of prosecutions. Prosecutions for violation of any provision of parts 1 through 5 are declared to be valid and proper, notwithstanding the existence of any other valid general or specific law of this state dealing with matters that may be the same as or similar to those covered by parts 1 through 5.

History: En. Sec. 39, Ch. 99, L. 1969; R.C.M. 1947, 90-191.

Cross-References

Police powers, 30-12-210.

Part 6

Money of Account

30-12-601. Money of account. The money of account in this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

History: En. Sec. 3150, Pol. C. 1895; re-en. Sec. 2033, Rev. C. 1907; re-en. Sec. 4283, R.C.M. 1921; Cal. Pol. C. Sec. 3272; re-en. Sec. 4283, R.C.M. 1935; R.C.M. 1947, 90-501.

Cross-References

Judgment — how amount expressed, 25-9-203.

Form and contents of writ, 25-13-301.

Money, 30-3-107.

30-12-602. Limitation. The provisions of 30-12-601 do not vitiate or affect any account, charge, or entry originally made or any note, bond, or other instrument expressed in any other money of account; but the same must be reduced to dollars and cents in any action.

History: En. Sec. 3151, Pol. C. 1895; re-en. Sec. 2034, Rev. C. 1907; re-en. Sec. 4284, R.C.M. 1921; Cal. Pol. C. Sec. 3273; re-en. Sec. 4284, R.C.M. 1935; R.C.M. 1947, 90-502.

Parts 7 through 9 reserved

Part 10

Paints — Labeling

30-12-1001. Paints — label — contents of label. A person, firm, or corporation who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coating, or additive for wood, metal, concrete, or roof coating, but excluding artists' colors, waxes, and polishes, shall label it in a clear and distinct manner. The label shall recite a full analysis of the content with a specification of pigment and vehicle, including the analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition may be inspected by the chief chemist of a laboratory designated by the department of commerce.

History: En. Sec. 1, Ch. 69, L. 1959; Sec. 3-1510, R.C.M. 1947; amd. and redes. 90-701 by Sec. 80, Ch. 218, L. 1974; R.C.M. 1947, 90-701; amd. Sec. 2, Ch. 274, L. 1981.

30-12-1002. Enforcement of part. The department of commerce shall enforce this part. The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in 30-12-1001. The department may purchase and open any package, can, jar, tube, or other receptacle containing any of the articles described in 30-12-1001 and found during an inspection.

History: En. Sec. 4, Ch. 69, L. 1959; Sec. 3-1513, R.C.M. 1947; amd. and redes. 90-702 by Sec. 83, Ch. 218, L. 1974; R.C.M. 1947, 90-702; amd. Sec. 6, Ch. 137, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.

30-12-1003. Designation of laboratory for analysis. The department of commerce shall designate the laboratory where analysis of the products described in 30-12-1001 shall be made. When products are found to be in violation of this part, the chief chemist of the laboratory designated by the department shall report the facts to the department. A certificate signed by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in 30-12-1001 is presumptive evidence of the facts stated in it.

History: **En. Sec. 5, Ch. 69, L. 1959; Sec. 3-1514, R.C.M. 1947; amd. and redes. 90-703 by Sec. 84, Ch. 218, L. 1974; R.C.M. 1947, 90-703; amd. Sec. 2, Ch. 274, L. 1981.**

30-12-1004. County attorney duties. The county attorney of the county where the violation of this part occurred shall prosecute every person, firm, or corporation violating this part when the evidence of the violation has been presented by the chief chemist of the laboratory making the analysis.

History: **En. Sec. 6, Ch. 69, L. 1959; Sec. 3-1515, R.C.M. 1947; amd. and redes. 90-704 by Sec. 85, Ch. 218, L. 1974; R.C.M. 1947, 90-704.**

30-12-1005. Possession as evidence. The possession, either constructive or actual, by a person, firm, or corporation dealing in the articles or substances described in 30-12-1001 and not properly labeled as provided by 30-12-1001 is prima facie evidence that those articles or substances are kept for sale in violation of this part.

History: **En. Sec. 3, Ch. 69, L. 1959; Sec. 3-1512, R.C.M. 1947; amd. and redes. 90-705 by Sec. 82, Ch. 218, L. 1974; R.C.M. 1947, 90-705.**

30-12-1006. Penalty for violations. A person, firm, or corporation who violates this part shall be prosecuted and fined not less than $25 or more than $100 and all costs, including cost of analysis to the amount of $25, or shall be imprisoned in the county jail for not more than 60 days.

History: **En. Sec. 2, Ch. 69, L. 1959; Sec. 3-1511, R.C.M. 1947; amd. and redes. 90-706 by Sec. 81, Ch. 218, L. 1974; R.C.M. 1947, 90-706.**

CHAPTER 13

ASSUMED BUSINESS NAMES, TRADEMARKS, AND RELATED RIGHTS

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30-13-302. When mark considered used in this state.
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Part 1

General Provisions

30-13-101 through 30-13-107. Repealed. Sec. 22, Ch. 429, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

30-13-101. En. Sec. 3160, Pol. C. 1895; re-en. Sec. 2036, Rev. C. 1907; re-en. Sec. 4286, R.C.M. 1921; Cal. Pol. C. Sec. 3196; re-en. Sec. 4286, R.C.M. 1935; R.C.M. 1947, 85-101.

30-13-102. En. Sec. 1370, Civ. C. 1895; re-en. Sec. 4565, Rev. C. 1907; re-en. Sec. 6812, R.C.M. 1921; Cal. Civ. C. Sec. 991; Based on Field Civ. C. Sec. 435; re-en. Sec. 6812, R.C.M. 1935; R.C.M. 1947, 67-1110.

30-13-103. En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2037, Rev. C. 1907; re-en. Sec. 4287, R.C.M. 1921; Cal. Pol. C. Sec. 3197; re-en. Sec. 4287, R.C.M. 1935; R.C.M. 1947, 85-102.

30-13-104. En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2038, Rev. C. 1907; re-en. Sec. 4288, R.C.M. 1921; Cal. Pol. C. Sec. 3198; amd. Sec. 1, Ch. 68, L. 1931; re-en. Sec. 4288, R.C.M. 1935; amd. Sec. 16, Ch. 117, L. 1961; R.C.M. 1947, 85-103.

30-13-105. En. Sec. 3163, Pol. C. 1895; re-en. Sec. 2039, Rev. C. 1907; re-en. Sec. 4289, R.C.M. 1921; Cal. Pol. C. Sec. 3199; re-en. Sec. 4289, R.C.M. 1935; R.C.M. 1947, 85-104.

30-13-106. En. Sec. 3300, Pol. C. 1895; re-en. Sec. 2103, Rev. C. 1907; re-en. Sec. 4291, R.C.M. 1921; re-en. Sec. 4291, R.C.M. 1935; R.C.M. 1947, 85-106.

30-13-107. (1)En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R.C.M. 1921; re-en. Sec. 4290, R.C.M. 1935; amd. Sec. 22, Ch. 513, L. 1973; amd. Sec. 6, Ch. 265, L. 1977; Sec. 85-105, R.C.M. 1947; (2)En. Sec. 3301, Pol. C. 1895; re-en. Sec. 2104, Rev. C. 1907; re-en. Sec. 4292, R.C.M. 1921; re-en. Sec. 4292, R.C.M. 1935; amd. Sec. 7, Ch. 265, L. 1977; Sec. 85-107, R.C.M. 1947; R.C.M. 1947, 85-105, 85-107.

30-13-108 through 30-13-110 reserved.

30-13-111. Repealed. Sec. 18, Ch. 260, L. 1979.

History: En. Sec. 3285, Civ. C. 1895; re-en. Sec. 5509, Rev. C. 1907; re-en. Sec. 8024, R.C.M. 1921; re-en. Sec. 8024, R.C.M. 1935; R.C.M. 1947, 63-606.

30-13-112. Registration of farm and ranch names. The owner of any farm or ranch in the state of Montana may, upon the payment of $1 to the county clerk and recorder in the county in which the farm or ranch may be situated, have the name of such farm or ranch entered and recorded in a register, which the county clerk and recorder shall keep for such purpose, and thereupon such owner shall be furnished a certificate by said clerk and recorder issued under the seal of said official, setting forth therein the name and location of the farm or ranch, and the name of such owner. When any name shall have been recorded as hereinbefore provided, any other person or persons shall not have the right to use the same name for any other farm or ranch in the same county, except by prefixing or adding thereto designating or other identifying words.

History: En. Sec. 1, Ch. 49, L. 1913; re-en. Sec. 6897, R.C.M. 1921; re-en. Sec. 6897, R.C.M. 1935; R.C.M. 1947, 73-109.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

30-13-113 through 30-13-120 reserved.

30-13-121. Goodwill of business. The goodwill of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

History: En. Sec. 1371, Civ. C. 1895; re-en. Sec. 4566, Rev. C. 1907; re-en. Sec. 6813, R.C.M. 1921; Cal. Civ. C. Sec. 992; Field Civ. C. Sec. 436; re-en. Sec. 6813, R.C.M. 1935; R.C.M. 1947, 67-1111.

Cross-References

Warranty on sale of goodwill, 30-11-221.

30-13-122. Goodwill transferable. The goodwill of a business is property, transferable like any other.

History: En. Sec. 1372, Civ. C. 1895; re-en. Sec. 4567, Rev. C. 1907; re-en. Sec. 6814, R.C.M. 1921; Cal. Civ. C. Sec. 993; Field Civ. C. Sec. 437; re-en. Sec. 6814, R.C.M. 1935; R.C.M. 1947, 67-1112.

Cross-References

Warranty on sale of goodwill, 30-11-221.

30-13-123 through 30-13-130 reserved.

30-13-131. Product of the mind — ownership. The author of any product of the mind, whether it is an invention, a composition in letters or art, or a design, with or without delineation or other graphical representation, has an exclusive ownership therein and in the representation or expression thereof which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

History: En. Sec. 1360, Civ. C. 1895; re-en. Sec. 4559, Rev. C. 1907; re-en. Sec. 6806, R.C.M. 1921; Cal. Civ. C. Sec. 980; Field Civ. C. Sec. 429; re-en. Sec. 6806, R.C.M. 1935; R.C.M. 1947, 67-1104.

Cross-References

State ownership of work of art, 22-2-407.

Sale of fine art by dealer and rights of artist, Title 22, ch. 2, part 5.

30-13-132. Joint authorship. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned is owned by them as follows:

(1) if the product is single, in equal proportions;

(2) if it is not single, in proportion to the contribution of each.

History: En. Sec. 1361, Civ. C. 1895; re-en. Sec. 4560, Rev. C. 1907; re-en. Sec. 6807, R.C.M. 1921; Cal. Civ. C. Sec. 981; Field Civ. C. Sec. 430; re-en. Sec. 6807, R.C.M. 1935; R.C.M. 1947, 67-1105.

30-13-133. Transfer. The owner of any product of the mind or of any representation or expression thereof may transfer his interest in the same.

History: En. Sec. 1362, Civ. C. 1895; re-en. Sec. 4561, Rev. C. 1907; re-en. Sec. 6808, R.C.M. 1921; Cal. Civ. C. Sec. 982; Field Civ. C. Sec. 431; re-en. Sec. 6808, R.C.M. 1935; R.C.M. 1947, 67-1106; amd. Sec. 7, Ch. 137, L. 1979.

30-13-134. Effect of publication. If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person without responsibility to the owner, so far as the law of this state is concerned.

History: En. Sec. 1363, Civ. C. 1895; re-en. Sec. 4562, Rev. C. 1907; re-en. Sec. 6809, R.C.M. 1921; Cal. Civ. C. Sec. 983; Field Civ. C. Sec. 432; re-en. Sec. 6809, R.C.M. 1935; R.C.M. 1947, 67-1107.

30-13-135. Subsequent inventor or author. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author or those claiming under him.

History: En. Sec. 1364, Civ. C. 1895; re-en. Sec. 4563, Rev. C. 1907; re-en. Sec. 6810, R.C.M. 1921; Cal. Civ. C. Sec. 984; Field Civ. C. Sec. 433; re-en. Sec. 6810, R.C.M. 1935; R.C.M. 1947, 67-1108.

30-13-136. Private writings. Letters and other private communications in writing belong to the person to whom they are addressed and delivered, but they cannot be published against the will of the writer except by authority of law.

History: En. Sec. 1365, Civ. C. 1895; re-en. Sec. 4564, Rev. C. 1907; re-en. Sec. 6811, R.C.M. 1921; Cal. Civ. C. Sec. 985; Field Civ. C. Sec. 434; re-en. Sec. 6811, R.C.M. 1935; R.C.M. 1947, 67-1109.

30-13-137 through 30-13-140 reserved.

30-13-141. Definitions. As used in 30-13-141 through 30-13-147, the following definitions apply:

(1) “Person” means any individual, firm, partnership, corporation, or association.

(2) “Owner” means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(3) “Performer” means the person or persons appearing in a performance.

(4) “Sound recording” means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded.

History: En. Sec. 1, Ch. 367, L. 1977; R.C.M. 1947, 85-601.

30-13-142. Unauthorized manufacture of sound recordings prohibited. (1) No person may knowingly, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit any sound recordings onto which such sounds are transferred or to use such sound recordings to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or to be used to promote the sale of any product such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. Sec. 2, Ch. 367, L. 1977; R.C.M. 1947, 85-602; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-143. Sale of unauthorized sound recordings prohibited. (1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent of the owner. Possession of 5 or more duplicate copies or 20 or more individual copies of such sound recording produced without the consent of the owner creates a rebuttable presumption that the copies are intended for sale or distribution in violation of this section.

(2) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recordings embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, without the prior express written consent of the performer.

(3) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. Sec. 3, Ch. 367, L. 1977; R.C.M. 1947, 85-603.**

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited. (1) No person may advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the name and address of its manufacturer and the name of the performer actually producing the sounds recorded.

(2) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. Sec. 4, Ch. 367, L. 1977; R.C.M. 1947, 85-604.**

Cross-References

Trademarks, Title 30, ch. 13, part 3.

Unfair trade practices and consumer protection, Title 30, ch. 14.

30-13-145. Forfeiture. Any article produced in violation of 30-13-142 through 30-13-144 and any equipment used to produce it are subject to forfeiture to and destruction by the appropriate law enforcement agency.

History: **En. Sec. 5, Ch. 367, L. 1977; R.C.M. 1947, 85-605.**

30-13-146. Exceptions. Sections 30-13-141 through 30-13-147 do not apply to:

(1) any broadcaster who, in connection with a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording;

(2) any person who transfers such sounds in the home for personal use, without compensation; or

(3) any person who transfers a single copy of such sounds for bona fide educational purposes, provided that no person directly or indirectly derives any pecuniary gain from such transfer.

History: En. Sec. 6, Ch. 367, L. 1977; R.C.M. 1947, 85-606.

30-13-147. Civil litigation. Sections 30-13-141 through 30-13-147 neither enlarge nor diminish the rights of parties in civil litigation.

History: En. Sec. 7, Ch. 367, L. 1977; R.C.M. 1947, 85-607.

Part 2

Assumed Business Names

Part Cross-References

Business corporations — corporate names, Title 35, ch. 1, part 3.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Rural cooperative utility names, 35-18-201.

30-13-201. Definitions. As used in this part, the following definitions apply:

(1) "Assumed business name" means any business name other than the full, true, and correct name of a person.

(2) "Person" means any individual, partnership, corporation, or other association.

History: En Sec. 1, Ch. 260, L. 1979.

30-13-202. Registration of assumed business name — when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or deceptively similar to an assumed business name already registered or to any corporate name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation or limited partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words.

History: En Sec. 2, Ch. 260, L. 1979; amd. Sec. 134, Ch. 575, L. 1981; amd. Sec. 1, Ch. 455, L. 1983.

Cross-References

Registration of ranch and farm names, 30-13-112.

30-13-203. Application for registration of assumed business name. All persons transacting business in this state under an assumed business name shall execute and file with the secretary of state, on forms furnished by the secretary of state, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and address, including the street name and number, of applicant;

(2) the complete name of proposed assumed business name;

(3) date of first use, in commerce, of assumed business name;

(4) description of business transacted under such name; and

(5) the name of county or counties in which business is being transacted.

History: En Sec. 3, Ch. 260, L. 1979; amd. Sec. 2, Ch. 174, L. 1983.

30-13-204. Filing application for registration — issuance of certificate. (1) One original and one copy of application for registration of an assumed business name shall be executed and delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration, to which he shall affix the copy.

(2) The certificate of registration, together with the copy of the application for registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

(3) The registration of an assumed business name remains in effect until canceled.

History: En Sec. 4, Ch. 260, L. 1979; amd. Sec. 1, Ch. 131, L. 1983.

30-13-205. When registration of assumed business name by foreign corporation or foreign limited partnership prohibited. No foreign corporation or foreign limited partnership which does not have an effective certificate of authority or certificate of registration to transact business in this state may register an assumed business name as provided for in this part.

History: En Sec. 5, Ch. 260, L. 1979; amd. Sec. 2, Ch. 455, L. 1983.

30-13-206. Term and renewal of assumed business name registration. (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of such applicant.

(3) If the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of such registration, the secretary of state shall cancel the registration.

History: En Sec. 6, Ch. 260, L. 1979.

30-13-207. Application for renewal of assumed business name. One original and one copy of an application for renewal of registration of an assumed business name shall be executed and delivered to the secretary of state. The application shall include but not be limited to the following information:

(1) the complete assumed business name;

(2) the name and address, including street name and number, if any, of applicant;

(3) description of business transacted; and

(4) the name of the county or counties in which business is being transacted.

History: En Sec. 7, Ch. 260, L. 1979; amd. Sec. 2, Ch. 131, L. 1983; amd. Sec. 3, Ch. 174, L. 1983.

30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate thereon. (1) If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of renewal, to which he shall affix the copy.

(2) The certificate of renewal, together with the copy of the application for renewal of registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

History: En Sec. 8, Ch. 260, L. 1979; amd. Sec. 3, Ch. 131, L. 1983.

30-13-209. Amendment. An amendment to registration of an assumed business name shall be filed with the secretary of state within 60 days after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;

(2) there is a change in the identity of the county or counties in which the name is or is intended to be used;

(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or

(4) the registrant wishes to change the name of a registered assumed business name.

History: En Sec. 9, Ch. 260, L. 1979.

30-13-210. Filing amendment to registration of assumed business name — issuance of certificate thereon. (1) One original and one copy of an amendment to the registration of an assumed business name, executed and verified on forms furnished by the secretary of state, shall be delivered to the secretary of state. The application for amended registration of an assumed business name shall include but not be limited to the following information:

(a) complete assumed business name prior to adoption of amendment;

(b) complete new assumed business name, if applicable;

(c) name and address of the registrant, including street name and number of the business office;

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with such registered assumed business name;

(e) the name of the county or counties in which the name is being used;

(f) if there is a change in the identity of the county or counties or addition of a county or counties in which the assumed business name is being used or is to be used, the name(s) of the new county or counties;

(g) if a person or persons having an interest in a business with a registered assumed name withdraws or dies, a statement of such fact; and

(h) a statement that the amended registration of assumed business name supersedes the original registration and all amendments thereto.

(2) If the secretary of state finds that the application for amended registration of assumed business name complies with this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of amendment, to which he shall affix the copy.

(3) The certificate of amendment, together with the copy of the amendment affixed thereto by the secretary of state, shall be returned to the registrant.

(4) The failure of the registrant of an assumed business name to comply with the requirements of this section shall result in the cancellation by the secretary of state of the registration.

History: En Sec. 10, Ch. 260, L. 1979; amd. Sec. 4, Ch. 131, L. 1983.

30-13-211. Reservation of proposed assumed business name. Any authorized person who has not commenced business but intends to commence business may reserve an assumed business name which is not in conflict with the provisions of 30-13-202 for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of an assumed business name, including but not limited to the following information:

(1) the complete assumed business name to be reserved;

(2) the name and address, including street name and number, if any, of applicant;

(3) the date applicant intends to commence business;

(4) description of business applicant intends to transact; and

(5) the county or counties in which applicant intends to conduct business.

History: En Sec. 11, Ch. 260, L. 1979.

30-13-212. Filing application for reservation of assumed business name — issuance of certificate thereon. (1) One original and one copy of an application for reservation of an assumed business name, duly executed by the applicant, shall be delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of reservation, to which he shall affix the copy.

(2) The certificate of reservation, together with the copy of the application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

History: En Sec. 12, Ch. 260, L. 1979; amd. Sec. 5, Ch. 131, L. 1983; amd. Sec. 4, Ch. 174, L. 1983.

30-13-213. Voluntary cancellation of registration of assumed business name. (1) When the registrant of record of a registered assumed business name wishes to cancel such registration, he shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of an assumed business name, which shall include but not be limited to the following information:

(a) complete name of the registered assumed business name to be canceled; and

(b) name and address, including the street name and number, if any, of the registrant of record.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, he shall file it in his office and mail a letter of acknowledgment of such filing to the registrant of record.

History: En Sec. 13, Ch. 260, L. 1979.

30-13-214. Cancellation of registration of assumed business name upon dissolution of domestic corporation — withdrawal or revocation of foreign corporation's authority to transact business. (1) If the only party of interest of an assumed business name is a domestic corporation which has been dissolved, the secretary of state shall cancel the registration.

(2) If the only party of interest of an assumed business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the secretary of state shall cancel the registration.

History: En Sec. 14, Ch. 260, L. 1979.

30-13-215. Effect of transacting business without certificate. No person or persons conducting or transacting business in this state without an effective certificate of registration of an assumed business name or having any interest therein may maintain any suit or action in any of the courts of this state under such name.

History: En Sec. 15, Ch. 260, L. 1979.

30-13-216. Evidentiary effect of certificates and documents of secretary of state. All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in his office in accordance with the provisions of this part when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated therein.

History: En Sec. 16, Ch. 260, L. 1979.

Cross-References

Entries in official books and records prima facie evidence, 26-1-605.

30-13-217. Fees and charges to be established and collected by secretary of state. (1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this part and commensurate with costs:

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this section.

History: En Sec. 17, Ch. 260, L. 1979; amd. Sec. 3, Ch. 119, L. 1985.

30-13-218. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

History: En. Sec. 1, Ch. 174, L. 1983.

Cross-References

False swearing, 45-7-202.

30-13-219 and 30-13-220 reserved.

30-13-221. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part, provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989.

Part 3

Trademarks

30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Trademark" means any word, name, symbol, device, or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(2) "Service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(3) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

(4) "Trade name" means a word, name, symbol, device, or any combination thereof used by a person to identify his business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

(5) "Person" means any individual, firm, partnership, corporation, association, union, or other organization.

(6) "Applicant" means the person filing an application for registration of a trademark under this part or his legal representatives, successors, or assigns.

(7) "Registrant" means the person to whom the registration of a trademark under this part is issued or his legal representatives, successors, or assigns.

History: En. Sec. 1, Ch. 429, L. 1979.

30-13-302. When mark considered used in this state. For purposes of this part, a mark is considered to be used in this state:

(1) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in the state; and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

History: En. Sec. 2, Ch. 429, L. 1979.

30-13-303. Registrability. (1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) comprises immoral, deceptive, or scandalous matter; or

(b) comprises matter which may disparage or falsely suggest a connection with persons, living or dead, or institutions, beliefs, or national symbols or bring them into contempt or disrepute; or

(c) comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation or any simulation thereof; or

(d) comprises the name, signature, or portrait of any living individual, except with his written consent; or

(e) comprises a mark that:

(i) when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(ii) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(iii) is primarily merely a surname; or

(f) comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) However, nothing in subsection (1)(e) prevents the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the 5 years immediately preceding the date of the filing of the application for registration.

History: En. Sec. 3, Ch. 429, L. 1979.

30-13-304 through 30-13-310 reserved.

30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation;

(b) the essential feature of the mark to be registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed by the applicant or a member of the firm or an officer of the corporation or association applying.

(3) The application must be accompanied by two copies of a specimen or facsimile of such mark.

(4) The application for registration must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 4, Ch. 429, L. 1979; amd. Sec. 6, Ch. 131, L. 1983; amd. Sec. 6, Ch. 174, L. 1983; amd. Sec. 4, Ch. 119, L. 1985.

30-13-312. Filing application and issuing certificate of registration. (1) One original and one copy of an application for registration of a mark must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration to which he shall affix the copy.

(2) The certificate of registration, together with the copy of the application for registration of mark affixed thereto, shall be returned to the applicant.

(3) Any certificate of registration issued by the secretary of state under the provisions of this section or a copy thereof duly certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of such mark in any judicial proceeding in any court of this state.

History: En. Sec. 5, Ch. 429, L. 1979; amd. Sec. 7, Ch. 131, L. 1983.

30-13-313. Duration and renewal. (1) Registration of a mark under this part is effective for a term of 10 years from the date of registration, and upon application filed within 6 months prior to the expiration of such term, the registration may be renewed for another 10 years.

(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and business address of the applicant;

(b) a description of the mark; and

(c) a statement that the mark is still in use by the applicant in this state.

(3) The application for renewal of mark registration must be signed by the applicant.

(4) The application for renewal of mark registration must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 6, Ch. 429, L. 1979; amd. Sec. 7, Ch. 174, L. 1983; amd. Sec. 5, Ch. 119, L. 1985.

30-13-314. Filing application for renewal of registration — issuing certificate of renewal. (1) One original and one copy of an application for renewal of mark registration must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of registration to which he shall affix the copy.

(2) The certificate of renewal of registration, together with the copy of the application for renewal of mark registration affixed thereto, shall be returned to the applicant.

(3) A mark registration may be renewed for successive periods of 10 years in the manner provided for in subsections (1) and (2).

(4) The secretary of state shall notify registrants of marks of the necessity of renewal within the year immediately preceding the expiration of the 10

years from the date of registration, by writing to the last-known address of the registrants.

(5) Any registration in force on July 1, 1979, expires 10 years from the date of the registration or from the date of the last renewal thereof or on July 1, 1980, whichever is later, if renewal of mark registration is not effected in the manner provided for in this part.

(6) The secretary of state shall, by January 1, 1981, notify each person who registered a mark prior to July 1, 1980, of the date of expiration of such registration unless renewed in accordance with the provisions of this part, by writing to the last-known address of the registrant.

History: En. Sec. 7, Ch. 429, L. 1979; amd. Sec. 8, Ch. 131, L. 1983.

30-13-315. Assignment. (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to such subsequent purchase.

(2) One original and one copy of an assignment of a mark must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and address of the assignor;

(b) the name and address of the assignee;

(c) the registration number of the mark; and

(d) the date of registration.

(3) The assignment of a mark must be signed and verified by the assignor.

(4) The assignment of a mark must be accompanied by a filing fee as provided for in 30-13-320.

History: En. Sec. 8, Ch. 429, L. 1979; amd. Sec. 9, Ch. 131, L. 1983; amd. Sec. 6, Ch. 119, L. 1985.

30-13-316. Filing of assignment — issuing certificate of assignment. (1) One original and one copy of the assignment of a mark must be delivered to the secretary of state. If the secretary of state finds that the assignment complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on the original and the copy the word “filed” and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of assignment to which he shall affix the copy.

(2) The certificate of assignment, together with the copy of assignment of a mark affixed thereto, shall be returned to the assignee.

History: En. Sec. 9, Ch. 429, L. 1979; amd. Sec. 10, Ch. 131, L. 1983.

30-13-317. Records. The secretary of state shall keep for public examination a record of all marks registered or renewed under this part.

History: En. Sec. 10, Ch. 429, L. 1979.

30-13-318. Cancellation. The secretary of state shall cancel from the register:

(1) after July 1, 1981, each registration made prior to July 1, 1980, that is more than 10 years old and not renewed in accordance with this part;

(2) any registration for which he receives a written request for cancellation, signed and verified by the registrant or the assignee of record and accompanied by fees as prescribed in this part;

(3) each registration granted under this part and not renewed in accordance with the provisions of this part;

(4) any registration concerning which a court of competent jurisdiction finds that:

(a) the registered mark has been abandoned;

(b) the registrant is not the owner of the mark;

(c) the registration was granted improperly;

(d) the registration was obtained fraudulently;

(e) the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under this part as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that he is the owner of a concurrent registration of his mark in the United States patent and trademark office covering an area including this state, the registration under this part may not be canceled.

(5) a registration ordered canceled by a court of competent jurisdiction on any grounds.

History: En. Sec. 11, Ch. 429, L. 1979; amd. Sec. 8, Ch. 174, L. 1983.

30-13-319. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

History: En. Sec. 5, Ch. 174, L. 1983.

Cross-References

False swearing, 45-7-202.

30-13-320. Secretary of state to establish and collect fees commensurate with costs. The secretary of state shall by administrative rule establish and provide for collection of fees and miscellaneous charges for filing documents and issuing certificates as required by this part. The fees must be commensurate with the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this part.

History: En. Sec. 1, Ch. 119, L. 1985.

Cross-References

Duties of Secretary of State, 2-15-401.

30-13-321 through 30-13-330 reserved.

30-13-331. Classification. (1) The following general classes of goods and services are established for convenience of administration of this part. This classification does not limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods or services comprised in a single class with regard to which the mark is actually being used. However, in no event may a single application include goods or services that fall within different classes of goods or services.

(2) The classes of goods are as follows:
(a) raw or partly prepared materials;
(b) receptacles;
(c) baggage, animal equipments, portfolios, and pocketbooks;
(d) abrasive and polishing materials;
(e) adhesives;
(f) chemicals and chemical compositions;
(g) cordage;
(h) smokers' articles, not including tobacco products;
(i) explosives, firearms, equipment, and projectiles;
(j) fertilizers;
(k) inks and inking materials;
(l) construction materials;
(m) hardware and plumbing and steamfitting supplies;
(n) metals and metal casting and forgings;
(o) oils and greases;
(p) paints and painters' materials;
(q) tobacco products;
(r) medicines and pharmaceutical preparations;
(s) vehicles;
(t) linoleum and oil cloth;
(u) electrical apparatus, machines, and supplies;
(v) games, toys, and sporting goods;
(w) cutlery, machinery, and tools, and parts thereof;
(x) laundry appliances and machines;
(y) locks and safes;
(z) measuring and scientific appliances;
(aa) horological instruments;
(bb) jewelry and precious metal ware;
(cc) brooms, brushes, and dusters;
(dd) crockery, earthenware, and porcelain;
(ee) filters and refrigerators;
(ff) furniture and upholstery;
(gg) glassware;
(hh) heating, lighting, and ventilating apparatus;
(ii) belting, hose, machinery packing, and nonmetallic tires;
(jj) musical instruments and supplies;
(kk) paper and stationery;
(ll) prints and publications;
(mm) clothing;

(nn) fancy goods, furnishings, and notions;
(oo) canes, parasols, and umbrellas;
(pp) knitted, netted, and textile fabrics, and substitutes therefor;
(qq) thread and yarn;
(rr) dental, medical, and surgical appliances;
(ss) soft drinks and carbonated waters;
(tt) foods and ingredients of foods;
(uu) wines;
(vv) malt beverages and liquors;
(ww) distilled alcoholic liquors;
(xx) merchandise not otherwise classified;
(yy) cosmetics and toilet preparations;
(zz) detergents and soaps.

(3) The classes of services are as follows:
(a) miscellaneous;
(b) advertising and business;
(c) insurance and financial;
(d) construction and repair;
(e) communications;
(f) transportation and storage;
(g) material treatment;
(h) education and entertainment.

History: En. Sec. 12, Ch. 429, L. 1979.

30-13-332. Fraudulent registration. Any person who, for himself or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary of state under the provisions of this part by knowingly making any false or fraudulent representation, verbally or in writing or by any other fraudulent means, is liable to pay all damages sustained in consequence of such filing or registration. Such damages may be recovered by or on behalf of the injured party in any court of competent jurisdiction.

History: En. Sec. 13, Ch. 429, L. 1979.

30-13-333. Infringement. (1) Subject to the provisions of 30-13-336, any person is liable in a civil action brought by the lawful owner of a registered mark under 30-13-335 if such person:

(a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any such mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services.

(2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with

knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

History: En. Sec. 14, Ch. 429, L. 1979.

30-13-334. Injury to business reputation — dilution. Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this part or a mark valid at common law or a trade name valid at common law is grounds for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

History: En. Sec. 15, Ch. 429, L. 1979.

30-13-335. Remedies. (1) Any owner of a mark registered under this part may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark. Any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as is considered by the court to be just and reasonable. The court may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale. The court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court or to the complainant to be destroyed.

(2) The enumeration in this part of any right or remedy does not affect a registrant's right to prosecute under any criminal law of this state.

History: En. Sec. 16, Ch. 429, L. 1979.

30-13-336. Common-law rights. Nothing in this part adversely affects the rights or the enforcement of rights in marks acquired at common law in good faith at any time.

History: En. Sec. 17, Ch. 429, L. 1979.

Cross-References

Common law applicability, 1-1-108.

30-13-337 through 30-13-340 reserved.

30-13-341. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part, provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989.

CHAPTER 14

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

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Chapter Cross-References

Protection of consumers from unfair practices of corporations, Art. XIII, sec. 1, Mont. Const.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

Part 1

Consumer Protection Act

Part Cross-References

Consumer counsel, Art. XIII, sec. 2, Mont. Const.

Policy of Montana Alcoholic Beverage Code, 16-1-101.

Policy of Montana Cigarette Sales Act, 16-10-102.

Violation of consumer reporting agencies law as violation of this part, 31-3-153.

Consumer Product Safety Act of 1975, Title 50, ch. 30.

30-14-101. Short title. This part shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973".

History: En. Sec. 19, Ch. 275, L. 1973; R.C.M. 1947, 85-418.

30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of commerce created in 2-15-1801.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart,

photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material includes the inspection, study, or copying of such material and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

History: En. Sec. 1, Ch. 275, L. 1973; R.C.M. 1947, 85-401; amd. Sec. 2, Ch. 274, L. 1981.

30-14-103. Unlawful practices. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

History: En. Sec. 2, Ch. 275, L. 1973; R.C.M. 1947, 85-402.

Cross-References

Violation of consumer reporting agencies law as violation of this part, 31-3-153.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Chain distributor schemes, 45-6-319.

Illegal branding or altering or obscuring a brand, 45-6-327.

30-14-104. Federal interpretation — rules determining unfair competition and deception. (1) It is the intent of the legislature that in construing 30-14-103 due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

(2) The department may make rules interpreting the provisions of 30-14-103. Such rules shall not be inconsistent with the rules, regulations, and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

History: En. Sec. 3, Ch. 275, L. 1973; R.C.M. 1947, 85-403.

30-14-105. Exemptions. Nothing in this part shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this part or the United States;

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service;

(3) national advertising.

History: **En. Sec. 4, Ch. 275, L. 1973; R.C.M. 1947, 85-404.**

30-14-106 through 30-14-110 reserved.

30-14-111. Department to restrain unlawful acts. (1) Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction or temporary restraining order the use of such method, act, or practice, upon the giving of appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at least 20 days before the hearing of the action where the relief to be sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) The action may be brought in the district court in which such person resides or has his principal place of business or, with consent of the parties, may be brought in the district court of Lewis and Clark County.

(4) The courts are authorized to issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and such injunctions shall be issued without bond.

History: **En. Sec. 5, Ch. 275, L. 1973; R.C.M. 1947, 85-405; amd. Sec. 1, Ch. 394, L. 1979.**

Cross-References

Enforcement by Department, 30-14-220.

30-14-112. Assurance of compliance. In the administration of this part, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice considered to be violative of this part from any person who has engaged or was about to engage in any such method, act, or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 30-14-111.

History: **En. Sec. 9, Ch. 275, L. 1973; amd. Sec. 10, Ch. 265, L. 1977; R.C.M. 1947, 85-409.**

30-14-113. Investigative demand. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge or to appear and testify or produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court of the county in which the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark County.

History: En. Sec. 10, Ch. 275, L. 1973; amd. Sec. 11, Ch. 265, L. 1977; R.C.M. 1947, 85-410.

Cross-References

Investigations, 30-14-221.

30-14-114. Department authority. To accomplish the objectives and to carry out the duties prescribed by this part, the department, in addition to other powers conferred upon it by this part, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms, and promulgate rules as may be necessary, which rules shall have the force of law; provided that none of the powers conferred by this part may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture. Information obtained pursuant to the powers conferred by this part shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

History: En. Sec. 11, Ch. 275, L. 1973; R.C.M. 1947, 85-411.

Cross-References

Investigations, 30-14-221.

30-14-115. Service of process — how made. Service of any notice, demand, or subpoena under this part shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 275, L. 1973; R.C.M. 1947, 85-412.

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

30-14-116 through 30-14-120 reserved.

30-14-121. Duties of county attorney and attorney general. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this part. The county attorney or the attorney general, on request of the department or a county attorney, may initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone or the attorney general on request of the county attorney, the person prosecuting shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney or attorney general shall make a report thereon to the department within 30 days of the final disposition of the matter.

History: En. Sec. 16, Ch. 275, L. 1973; amd. Sec. 1, Ch. 407, L. 1977; R.C.M. 1947, 85-416.

30-14-122. Employment of investigator by county attorney. The county attorney in first- and second-class counties may designate an employee to act as a full-time investigator.

History: En. Sec. 17, Ch. 275, L. 1973; R.C.M. 1947, 85-417.

30-14-123 through 30-14-130 reserved.

30-14-131. Restoration. The court may make such additional orders or judgments as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this part declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

History: En. Sec. 6, Ch. 275, L. 1973; R.C.M. 1947, 85-406.

30-14-132. Powers of receiver — proof of damages — jurisdiction. (1) When a receiver is appointed by the court pursuant to this part, he has the power to sue for, collect, receive, and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this part, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

(2) Any person who has suffered damages as a result of the use or employment of any unlawful practice and submits proof to the satisfaction of the court that he has in fact been damaged may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

History: En. Sec. 7, Ch. 275, L. 1973; amd. Sec. 8, Ch. 265, L. 1977; R.C.M. 1947, 85-407.

30-14-133. Damages — notice to public agencies — attorney fees — prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller or lessor resides or has his principal place of business or is doing business to recover actual damages or $200, whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained and may provide such equitable relief as it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103.

History: En. Sec. 8, Ch. 275, L. 1973; amd. Sec. 9, Ch. 265, L. 1977; R.C.M. 1947, 85-408.

Cross-References

Rules of Civil Procedure, Title 25, ch. 20.

30-14-134. Enforcement of department orders — contempt. If any person fails or refuses to file any statement or report or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state; revoking or suspending the certificate of authority to do business in this state of a foreign corporation; or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required until the person files the statement or report or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

History: En. Sec. 13, Ch. 275, L. 1973; R.C.M. 1947, 85-413.

30-14-135 through 30-14-140 reserved.

30-14-141. Dissolution or forfeiture of corporate franchise. Upon petition by the department, the district court may, in its discretion, order the dissolution, suspension, or forfeiture of franchise of any corporation which violates the terms of any injunction issued under 30-14-111.

History: En. Sec. 15, Ch. 275, L. 1973; R.C.M. 1947, 85-415.

30-14-142. Penalties. (1) A person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil penalty of not more than $10,000 per violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause shall be continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil penalty of not more than $500 per violation.

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than $2,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of 30-14-103.

History: En. Sec. 14, Ch. 275, L. 1973; R.C.M. 1947, 85-414; amd. Sec. 8, Ch. 137, L. 1979; amd. Sec. 2, Ch. 394, L. 1979.

Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Part 2

Unfair Trade Practices Generally

30-14-201. Purpose. The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part shall be literally construed so that its beneficial purposes may be subserved.

History: En. Sec. 14, Ch. 80, L. 1937; Sec. 51-117, R.C.M. 1947; amd. and redes. 51-501 by Sec. 1, Ch. 518, L. 1977; R.C.M. 1947, 51-501.

30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil. A

product or service of a public utility is not included within the term "article of commerce".

(2) "Business" includes any person, as defined in (8), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(4) "Cost", as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is lesser, less all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(5) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes, without being limited to, the following items of expense:

(a) labor (including salaries of executives and officers);
(b) rent;
(c) interest on borrowed capital;
(d) depreciation;
(e) selling cost;
(f) maintenance of equipment;
(g) delivery costs;
(h) credit losses;
(i) all types of licenses;
(j) taxes;
(k) insurance and advertising.

(6) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when such vendor pays for merchandise within a limited or specified time.

(7) "Department" means the department of commerce provided for in 2-15-1801.

(8) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(9) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

History: En. 51-502 by Sec. 2, Ch. 518, L. 1977; R.C.M. 1947, 51-502; amd. Sec. 2, Ch. 274, L. 1981.

30-14-203. Persons responsible. Any person who, either as director, officer, or agent of any business or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible therefor equally with the person or business for whom or which he acts.

History: En. Sec. 2, Ch. 80, L. 1937; Sec. 51-102, R.C.M. 1947; amd. and redes. 51-503 by Sec. 3, Ch. 518, L. 1977; R.C.M. 1947, 51-503; amd. Sec. 135, Ch. 575, L. 1981.

Cross-References

Accountability for conduct of corporation, 45-2-312.

30-14-204. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person or business for whom or which he acts.

History: En. 51-504 by Sec. 4, Ch. 518, L. 1977; R.C.M. 1947, 51-504; amd. Sec. 136, Ch. 575, L. 1981.

Cross-References

Terms denoting state of mind, 1-1-204.

Definitions and state of mind, 45-2-101.

30-14-205. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any restriction in trade, to:

(a) limit productions;

(b) increase or reduce the price of merchandise or commodities;

(c) prevent competition in the distribution or sale of merchandise or commodities;

(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;

(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;

(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

History: En. 51-505 by Sec. 5, Ch. 518, L. 1977; R.C.M. 1947, 51-505.

Cross-References

Unlawful practices, 30-14-103.

30-14-206. Labor excepted. The provisions of 30-14-205 do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages.

History: En. Sec. 2, Ch. 97, L. 1909; re-en. Sec. 10902, R.C.M. 1921; re-en. Sec. 10902, R.C.M. 1935; Sec. 94-1105, R.C.M. 1947; redes. 51-402 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 51-506 by Sec. 6, Ch. 518, L. 1977; R.C.M. 1947, 51-506.

30-14-207. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

History: En. 51-507 by Sec. 7, Ch. 518, L. 1977; R.C.M. 1947, 51-507.

Cross-References

Sales below cost — evidence of unlawful intent, 16-10-301.

Sale defined, 30-11-101.

Unlawful practices, 30-14-103.

30-14-208. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer, discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.

(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair discrimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

History: En. 51-508 by Sec. 8, Ch. 518, L. 1977; R.C.M. 1947, 51-508.

Cross-References

Montana product preference provisions, 18-1-112.

Montana Small Business Purchasing Act, Title 18, ch. 5, part 3.

30-14-209. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

History: En. 51-509 by Sec. 9, Ch. 518, L. 1977; R.C.M. 1947, 51-509.

Cross-References

Unlawful practices, 30-14-103.

30-14-210. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

History: En. 51-510 by Sec. 10, Ch. 518, L. 1977; R.C.M. 1947, 51-510.

30-14-211. Establishing cost survey. (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, establish the cost survey provided for in 30-14-210. When petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing such cost survey. The hearing shall be held at the office of the department and upon that notice which the department may require by rule. However, notice of the hearing shall be published for at least 2 successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by it as provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which the trade or business will be affected, and find and determine the probable cost of doing business or overhead expense, stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable cost of doing business or overhead expense stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined shall be presumed to be the actual cost of doing business and overhead expense of any person in the trade or business and within the area affected by the cost survey.

History: En. Sec. 12A, Ch. 80, L. 1937, added by Sec. 2, Ch. 50, L. 1939; amd. Sec. 1, Ch. 21, L. 1945; amd. Sec. 2, Ch. 129, L. 1949; amd. Sec. 122, Ch. 431, L. 1975; Sec. 51-114, R.C.M. 1947; amd. and redes. 51-511 by Sec. 11, Ch. 518, L. 1977; R.C.M. 1947, 51-511.

Cross-References

Department authority, 30-14-114.

30-14-212. Forced sales not basis of cost price. In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of sale of the article or product replaced through the ordinary channels of trade, unless:

(1) the article or product is kept separate from goods purchased in the ordinary channels of trade;

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale or by means other than through the ordinary channels of trade and such advertising states the conditions under which the goods were purchased and the quantity of merchandise to be sold or offered for sale.

History: En. Sec. 4, Ch. 80, L. 1937; Sec. 51-104, R.C.M. 1947; amd. and redes. 51-512 by Sec. 12, Ch. 518, L. 1977; R.C.M. 1947, 51-512.

30-14-213. Sales excepted. Sections 30-14-209, 30-14-210, and 30-14-212 do not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any article of commerce;

(2) of seasonal goods;

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public thereof;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or

(7) to the state of Montana or any of its institutions.

History: En. Sec. 6, Ch. 80, L. 1937; amd. Sec. 1, Ch. 100, L. 1941; Sec. 51-107, R.C.M. 1947; amd. and redes. 51-513 by Sec. 13, Ch. 518, L. 1977; R.C.M. 1947, 51-513.

30-14-214. Fair price for agricultural products. (1) The following method shall be used in determining fair prices for agricultural products sold on local markets in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When 75% of the producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be the fair price for that product or commodity under the terms of this part.

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities. An organization representing consumers may not be denied representation at the hearing.

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a violation of this part for a producer, jobber,

wholesaler, or retailer to sell or buy an agricultural commodity or product below the price established by the department. Such action is punishable under the terms provided in this part.

History: En. Sec. 5-A, Ch. 80, L. 1937; amd. Sec. 120, Ch. 431, L. 1975; Sec. 51-106, R.C.M. 1947; amd. and redes. 51-514 by Sec. 14, Ch. 518, L. 1977; R.C.M. 1947, 51-514.

30-14-215. Rebates forbidden. (1) The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and when such payment or allowance tends to destroy competition, is an unfair trade practice, and any person resorting to such trade practice is guilty of a misdemeanor and on conviction is subject to the penalties set out in 30-14-224.

(2) However, nothing in this section prevents a cooperative association, organized and operating on a true cooperative basis, from returning to the members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations in proportion to their purchases or sales from, to, or through the association.

History: En. Sec. 7, Ch. 80, L. 1937; Sec. 51-108, R.C.M. 1947; amd. and redes. 51-515 by Sec. 15, Ch. 518, L. 1977; R.C.M. 1947, 51-515.

Cross-References

Unlawful practices, 30-14-103.

30-14-216. Pooling of grain prohibited. (1) It is unlawful for any person engaged in the buying, selling, or handling of grain in any public local warehouse in this state or for the local agent in charge of such warehouse or any other agent of the person operating the same to enter into a contract, agreement, or understanding with any other person owning or operating any other public local warehouse at any railway station or with its agent whereby:

(a) the amount of grain to be received or handled by the warehouses at such station is to be equalized or pooled between the warehouses;

(b) the profits or earnings derived from the warehouses are to be divided, pooled, or apportioned in any manner; or

(c) the price to be paid for any kind of grain at such station is to be fixed or in any manner affected.

(2) Each day of the continuance of any such agreement, contract, or understanding constitutes a separate offense.

History: En. Sec. 1, Ch. 69, L. 1915; re-en. Sec. 10912, R.C.M. 1921; Sec. 94-1115, R.C.M. 1947; redes. 51-411 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10912, R.C.M. 1935; amd. and redes. 51-516 by Sec. 16, Ch. 518, L. 1977; R.C.M. 1947, 51-516.

Cross-References

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

30-14-217. Destruction of food. It is unlawful for any person to destroy or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other product or article which is customary or proper food for human beings and is in fit sanitary condition to be used as such.

History: En. Sec. 1, Ch. 16, L. 1919; re-en. Sec. 10914, R.C.M. 1921; Sec. 94-1117, R.C.M. 1947; redes. 51-413 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10914 R.C.M.; amd. and redes. 51-517, by Sec. 17, Ch. 518, L. 1977; R.C.M. 1947, 51-517.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, part 2.

30-14-218. Alteration of invoices prohibited. It is unlawful for a person to change, alter, substitute, or falsify an invoice if the practice tends to injure a competitor, destroy competition, or mislead a court or the department. Such practice is unfair trade practice and a person resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in 30-14-224.

History: En. Sec. 4, Ch. 50, L. 1939; amd. Sec. 124, Ch. 431, L. 1975; Sec. 51-116, R.C.M. 1947; amd. and redes. 51-518 by Sec. 18, Ch. 518, L. 1977; R.C.M. 1947, 51-518.

Cross-References

Alteration — commercial paper, 30-3-407.

Altered warehouse receipts, 30-7-208.

Altered bills of lading, 30-7-306.

Unlawful practices, 30-14-103.

30-14-219. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of any of the provisions of 30-14-205 through 30-14-218 is an illegal contract and no recovery thereon may be had.

History: En. Sec. 9, Ch. 80, L. 1937; Sec. 51-110, R.C.M. 1947; amd. and redes. 51-522 by Sec. 22, Ch. 518, L. 1977; R.C.M. 1947, 51-522.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

30-14-220. Enforcement by department. (1) The department shall prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department shall:

(a) make its own investigation;

(b) within 60 days of the finding of probable cause make a written report of its investigation; and

(c) mail a copy of its findings to the person initially giving notice of a violation.

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part and if it appears to the department that a proceeding by it would be in the interest of the public, it shall issue and serve upon the person a complaint stating the charges and containing a notice of a hearing at a place and upon a day not less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) The person so complained against may appear at the place and time so fixed and show cause why an order should not be entered by the department requiring such person to stop the violation of the law charged in the complaint.

(d) Any person may make application and upon good cause shown may be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding shall be reduced to writing and filed with the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring such person to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings under this section shall be given precedence over other civil cases pending in the district court and shall be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than $1,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part.

History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967; amd. Sec. 121, Ch. 431, L. 1975; Sec. 51-113, R.C.M. 1947; amd. and redes. 51-519 by Sec. 19, Ch. 518, L. 1977; R.C.M. 1947, 51-519.

Cross-References

Department to restrain unlawful acts, 30-14-111.

Department authority, 30-14-114.

Enforcement of Department orders — contempt, 30-14-134.

30-14-221. Investigations. (1) The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of contumacy or refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution. Nothing in this section prohibits the department from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the department determines, in its sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

History: En. Sec. 3, Ch. 50, L. 1939; amd. Sec. 123, Ch. 431, L. 1975; Sec. 51-115, R.C.M. 1947; amd. and redes. 51-520 by Sec. 20, Ch. 518, L. 1977; R.C.M. 1947, 51-520; amd. Sec. 2, Ch. 577, L. 1983; amd. Sec. 2, Ch. 101, L. 1985.

Cross-References

Investigative demand, 30-14-113.

Perjury, 45-7-201.

30-14-222. Injunctions — damages — production of evidence. (1) Any person, if injured thereby, or the attorney general may maintain an action to enjoin a continuance of an act in violation of 30-14-205 through 30-14-218 and for the recovery of damages. If in such action the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the defendant from a continuance thereof. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of actual damages sustained.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition the books and records of any such defendant may be brought into court and introduced into evidence by reference. No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under 30-14-205 through 30-14-218 and 30-14-224.

History: En. Sec. 10, Ch. 80, L. 1937; Sec. 51-111, R.C.M. 1947; amd. and redes. 51-521 by Sec. 21, Ch. 518, L. 1977; R.C.M. 1947, 51-521.

Cross-References

Authentication and identification, Art. IX, M.R.Ev. (see Title 26, ch. 10).

Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).

30-14-223. Department to institute suit. Upon the third violation of any of the provisions of 30-14-205 through 30-14-218 by any business, the department shall institute proper suits or quo warranto proceedings in a court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such business and to permanently enjoin it from transacting business in this state. If in such action the court finds that the business is violating or has violated any of the provisions of 30-14-205 through 30-14-218, it shall enjoin the business from doing business in this state permanently or for such time as the court orders or shall annul the charter or revoke the franchise of such business.

History: En. Sec. 8, Ch. 80, L. 1937; Sec. 51-109, R.C.M. 1947; amd. and redes. 51-523 by Sec. 23, Ch. 518, L. 1977; R.C.M. 1947, 51-523; amd. Sec. 137, Ch. 575, L. 1981.

30-14-224. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of 30-14-206 through 30-14-218 is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months, or both.

(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000, or both.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with him in such business for a period of 1 year.

History: En. 51-524 by Sec. 24, Ch. 518, L. 1977; R.C.M. 1947, 51-524; amd. Sec. 9, Ch. 137, L. 1979.

Part 3

Motion Picture Fair Trade Practices Act

Part Cross-References

Theater licenses, 7-21-2205.

Certain motion picture theater employees not liable for prosecution, 45-8-203.

Theaters — sanitary inspections, 50-1-203.

30-14-301. Short title. This part shall be known and may be cited as the "Motion Picture Fair Trade Practices Act".

History: En. Sec. 1, Ch. 214, L. 1981.

30-14-302. Purpose. The purposes of this part are to establish fair and open procedures for the licensing of motion pictures within the state; to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state; to promote fair and effective competition in that business; and to benefit the moviegoing public by holding down admission prices to motion picture theaters, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibit it.

History: En. Sec. 2, Ch. 214, L. 1981.

Cross-References

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Chain distributor schemes, 45-6-319.

30-14-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling, or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theater in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.

(5) "Market area" means either a city in Montana or a city in any of the 11 western states that prohibits blind bidding.

(6) "Theater" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(7) "Trade screening" means the showing of a motion picture by a distributor in the market area. Such showing shall be open to any exhibitor interested in exhibiting the motion picture, and such exhibitor or his buying agency will be notified of such trade screening.

History: En. Sec. 3, Ch. 214, L. 1981.

30-14-304. Blind bidding prohibited. No distributor or exhibitor may engage in blind bidding.

History: En. Sec. 4, Ch. 214, L. 1981.

30-14-305. License agreements — unlawful provisions. (1) It is unlawful for any license agreement that provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theater within the state to contain or be conditioned upon a guarantee of a minimum payment to the distributor.

(2) Any provision, agreement, or understanding entered into after October 1, 1981, that provides for such a guarantee is void, and any purported waiver of the prohibition in subsection (1) is void and unenforceable.

History: En. Sec. 5, Ch. 214, L. 1981.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Contracts — what is unlawful, 28-2-701.

Contracts — what conditions void, 28-2-707.

30-14-306. Bid requirements. If bids are solicited from exhibitors for the purpose of entering into a license agreement, the invitation to bid shall include the date, time, and location of the trade screening of the motion picture that is the subject of the invitation to bid.

History: En. Sec. 6, Ch. 214, L. 1981.

30-14-307. Void acts. Any provision of an invitation to bid or a license agreement entered into after October 1, 1981, that waives any of the prohibitions of or fails to comply with this part is void and unenforceable.

History: En. Sec. 7, Ch. 214, L. 1981.

Cross-References

Contracts — what conditions void, 28-2-707.

30-14-308. Violation a misdemeanor. It is unlawful for any person to willfully violate any provision of this part. Any such violation constitutes a misdemeanor, and the violator shall be punished as provided in 46-18-212.

History: En. Sec. 8, Ch. 214, L. 1981.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 4

Uniform Trade Secrets Act

Part Cross-References

Hazardous chemical information — trade secret confidentiality, 50-78-205.

30-14-401. Short title. This part may be cited as the "Uniform Trade Secrets Act".

History: En. Sec. 1, Ch. 104, L. 1985.

30-14-402. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

History: En. Sec. 2, Ch. 104, L. 1985.

30-14-403. Injunctive relief — royalty. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

History: En. Sec. 3, Ch. 104, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

30-14-404. Damages. (1) In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages.

History: En. Sec. 4, Ch. 104, L. 1985.

Cross-References

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

30-14-405. Costs and attorney fees. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable costs and attorney fees to the prevailing party.

History: En. Sec. 5, Ch. 104, L. 1985.

Cross-References

Costs and attorney fees, Title 25, ch. 10.

30-14-406. Preservation of secret. In an action under this part, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

History: En. Sec. 6, Ch. 104, L. 1985.

30-14-407. Statute of limitations. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

History: En. Sec. 7, Ch. 104, L. 1985.

Cross-References

Statutes of Limitations — general provisions, Title 27, ch. 2, part 1.

30-14-408. Effect on other law. (1) This part displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret.

(2) This part does not affect:

(a) contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or

(b) criminal liability for misappropriation of a trade secret.

History: En. Sec. 8, Ch. 104, L. 1985.

Cross-References

Theft, 45-6-301.

30-14-409. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make the law uniform with respect to the subject of this act among states enacting it.

History: En. Sec. 9, Ch. 104, L. 1985.

Part 5

Personal Solicitation Sales

30-14-501. Purpose. The purpose of this part is to afford consumers subjected to high pressure personal solicitation sales tactics a cooling-off period.

History: En. Sec. 1, Ch. 426, L. 1973; amd. Sec. 1, Ch. 191, L. 1977; R.C.M. 1947, 85-501.

30-14-502. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind to sell goods or services which are primarily for personal, family, or household purposes, when either the seller or a person acting for him contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper; or

(d) an attempted sale of an insurance policy.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assignee of a seller.

History: En. 85-502.1 by Sec. 2, Ch. 191, L. 1977; R.C.M. 1947, 85-502.1; amd. Sec. 138, Ch. 575, L. 1981.

30-14-503. Disclosure obligation. Before any personal solicitation each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization he represents, the identity or kinds of goods or services he wishes to demonstrate or sell, and that he wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he represents. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting. Nonprofit organizations are exempt from the requirements of this section.

History: En. 85-502.2 by Sec. 3, Ch. 191, L. 1977; R.C.M. 1947, 85-502.2.

Cross-References

Sales, Title 30, ch. 11, parts 1, 2.

30-14-504. Buyer's right to cancel — time allowed — notice — return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to his signing of an agreement or offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

History: En. Sec. 3, Ch. 426, L. 1973; amd. Sec. 4, Ch. 191, L. 1977; R.C.M. 1947, 85-503.

Cross-References

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-505. Notice of right to cancel. (1) The seller shall furnish the buyer a notice which contains the statement set forth in subsection (a) or a statement as prescribed by federal trade commission rule governing door-to-door sales and printed in capital and lowercase letters of not less than 10-point boldfaced type with the seller's name and business address and the statement set forth in subsection (b):

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within 3 days after you sign the contract.

(date)

(b) CONTRACT CANCELED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the personal solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by 30-14-504 shall begin to run from the time the seller complies with this section.

History: **En. Sec. 4, Ch. 426, L. 1973; amd. Sec. 5, Ch. 191, L. 1977; R.C.M. 1947, 85-504.**

Cross-References

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-506. Repayment to buyer — retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor, the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

History: **En. Sec. 5, Ch. 426, L. 1973; amd. Sec. 6, Ch. 191, L. 1977; R.C.M. 1947, 85-505; amd. Sec. 10, Ch. 137, L. 1979.**

Cross-References

Sales and exchanges, Title 30, ch. 11, part 1.

Seller's responsibilities, Title 30, ch. 11, part 2.

30-14-507. Redelivery of goods. (1) Except as provided by 30-14-506(4), within a reasonable time after a personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk, and such goods must be returned in substantially the same condition as received.

History: **En. Sec. 6, Ch. 426, L. 1973; amd. Sec. 7, Ch. 191, L. 1977; R.C.M. 1947, 85-506.**

30-14-508. Violation. Except where inconsistent with the provisions of this part, a violation of this part is a violation of part 1.

History: **En. 85-507 by Sec. 8, Ch. 191, L. 1977; R.C.M. 1947, 85-507.**

Part 6

Sale of Imitation Indian Articles

30-14-601. Definitions. As used in this part, the following definitions apply:

(1) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(2) "Imitation Indian arts or crafts articles" means those made by machine or made wholly out of synthetic or artificial materials or articles which are not made by Indian labor or workmanship.

History: En. Sec. 1, Ch. 42, L. 1967; R.C.M. 1947, 85-301.

30-14-602. Articles to be designated and segregated. A person may not distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles must be physically segregated from authentic Indian articles for display purposes. All imitation Indian arts or crafts articles must be displayed near a sign prominently and legibly designating the articles as imitation.

History: En. Sec. 2, Ch. 42, L. 1967; amd. Sec. 1, Ch. 52, L. 1973; R.C.M. 1947, 85-302; amd. Sec. 1, Ch. 182, L. 1991.

Compiler's Comments

1991 Amendment: Inserted third sentence requiring that articles be displayed near a sign designating the articles as imitation; and made minor changes in style.

Cross-References

Warranty defined, 30-11-209.

30-14-603. Designation of authenticity. Only those articles bearing a registered trademark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

History: En. Sec. 3, Ch. 42, L. 1967; R.C.M. 1947, 85-303.

Cross-References

Warranty defined, 30-11-209.

30-14-604. Violation as misdemeanor. Any person who violates this part is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 42, L. 1967; R.C.M. 1947, 85-304.

Cross-References

When no penalty is specified, 46-18-212.

Part 7

Fraudulent Financing of Mining and Oil Companies

Part Cross-References

Fraud, 28-2-404 through 28-2-406.

Minerals, Oil, and Gas, Title 82.

30-14-701. Mining and oil companies — fraudulent handling of finances. For the purposes of 30-14-701 through 30-14-704, the following acts and offenses relative to the handling of the finances of mine and oil operations within the state of Montana shall be deemed fraudulent:

(1) failure to expend at least 75% of all money raised from the public from the sale of stock or securities of any other kind or character in the actual operation and development of the oil and mining property or in the construction of treating plants or from bona fide payments on the purchase price of state property;

(2) failure to apply net earnings from said operations, after deducting only reasonable and legitimate expenses, to either a reserve fund, distribution of dividends, liquidation of bona fide indebtedness, or reasonable development of said properties;

(3) the operation of holding companies in such a manner as to deprive the stockholders of the parent company of an equitable interest in the earnings of the parent company.

History: En. Sec. 1, Ch. 199, L. 1935; re-en. Sec. 11458.1, R.C.M. 1935; Sec. 94-2322, R.C.M. 1947; redes. 15-22-141 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-141.

30-14-702. Application. The provisions of 30-14-701 through 30-14-704 shall apply to any person, corporation, or other form of association now operating or which shall hereafter operate a mining or oil enterprise, the finances of which are derived in whole or in part from subscription and security sales to the public, and operating within the state of Montana. The provisions of 30-14-701 through 30-14-704 do not apply to any person, firm, corporation, or cooperative association holding a permit in good standing from the state securities commissioner or to securities listed on the New York stock exchange, Boston stock exchange, the board of trade of the city of Chicago, the Chicago stock exchange, or the New York curb exchange.

History: En. Sec. 2, Ch. 199, L. 1935; re-en. Sec. 11458.2, R.C.M. 1935; Sec. 94-2323, R.C.M. 1947; redes. 15-22-142 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-142; amd. Sec. 1, Ch. 84, L. 1983.

30-14-703. Investigation of complaints. Any stockholder or creditor of a mining or oil company as heretofore provided in 30-14-701 through 30-14-704 who has bona fide reason to believe that the provisions of 30-14-701 through 30-14-704 have been violated may complain relative thereto to the attorney general of the state, the county attorney of the county in which the property is located, or the state securities commissioner, and it shall be incumbent upon the officers mentioned to make a complete investigation of the records and affairs of said corporation or corporations. In the event the facts disclose the violation of the provisions of 30-14-701 through 30-14-704, it shall be the duty of the officer to prefer charges against the officers and directors of the corporation or corporations involved.

History: En. Sec. 3, Ch. 199, L. 1935; re-en. Sec. 11458.3, R.C.M. 1935; Sec. 94-2324, R.C.M. 1947; redes. 15-22-143 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-143; amd. Sec. 8, Ch. 351, L. 1979.

30-14-704. Penalty. Any person or the officers or directors of any corporation, cooperative association, or any other association of any kind or character found guilty of the violation of the provisions of 30-14-701 through 30-14-704 shall be subject to imprisonment in the state prison for a term of not less than 90 days or more than 3 years or by a fine of not less than $100 or more than $1,000 or both such fine and imprisonment.

History: En. Sec. 4, Ch. 199, L. 1935; re-en. Sec. 11458.4, R.C.M. 1935; Sec. 94-2325, R.C.M. 1947; redes. 15-22-144 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-144.

Part 8

Retail Motor Fuel Marketing

30-14-801. *(Temporary)* **Short title.** This part may be cited as the "Montana Retail Motor Fuel Marketing Act". *(Terminates July 1, 1993—sec. 9, Ch. 499, L. 1991.)*

History: En. Sec. 1, Ch. 499, L. 1991.

Compiler's Comments

Effective Date — Termination: Section 9, Ch. 499, L. 1991, provided: "[This act] is effective on passage and approval [approved April 19, 1991] and terminates July 1, 1993."

30-14-802. *(Temporary)* **Purpose.** The legislature recognizes that independent and small dealers and distributors of retail motor fuel are vital to a healthy, competitive marketplace and are unable to survive financially in competition with subsidized, below-cost pricing at the retail level by dealers and distributors who have other sources of income. The legislature believes that subsidized, below-cost pricing is a predatory practice that is not conducive to fair trade. The legislature finds that below-cost pricing laws are effective in protecting independent and small retailers and wholesalers in other jurisdictions from subsidized pricing, which is inherently unfair and destructive, reduces competition in the motor fuel marketing industry, and is a form of predatory pricing. The purpose of this part is to prevent and eliminate predatory pricing of retail motor fuel. *(Terminates July 1, 1993—sec. 9, Ch. 499, L. 1991.)*

History: En. Sec. 2, Ch. 499, L. 1991.

Compiler's Comments

Effective Date — Termination: Section 9, Ch. 499, L. 1991, provided: "[This act] is effective on passage and approval [approved April 19, 1991] and terminates July 1, 1993."

30-14-803. *(Temporary)* **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a person who, other than through a franchise or marketing agreement, controls, is controlled by, or is under common control with any other person.

(2) "Cost of doing business", in the absence of proof of lesser cost, means 1% of the delivered cost of motor fuel for wholesale sales and 6% of the delivered cost of motor fuel for retail sales and in other cases includes all costs incurred in the conduct of business, including but not limited to:

(a) labor, including salaries of executives and officers;

(b) rent that is not less than the fair market value based on current use;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) losses due to breakage or damage;

(h) credit card fees or other charges;

(i) credit losses; and

(j) all licenses, taxes, insurance, and advertising.

(3) "Customary discount for cash" means an allowance, whether part of a larger discount or not, made to a wholesaler or retailer when a person pays for motor fuel within a limited or specified time.

(4) "Delivered cost of motor fuel" means:

(a) for a distributor or retailer, the lower of the most recent cost of motor fuel to the distributor or retailer or the lowest replacement cost of motor fuel to the distributor or retailer within 5 days prior to the date of sale, in the quantity last purchased, whether within or before the 5-day period, less all trade discounts except customary discounts for cash plus transportation costs and any taxes that may be required by law if not already included in the invoice cost; or

(b) for a refiner, that refiner's posted rack price to the wholesale class of trade at the terminal used by the refiner to obtain the motor fuel, plus transportation costs and any taxes that may be required by law. If the refiner does not regularly sell to the wholesale class of trade at the terminal or does not post a terminal price, the refiner may use as its rack price the posted price of any other refiner at a terminal within the general trade area that has products readily available for sale to the wholesale class of trade.

(5) "Distributor" means a person engaged in the purchase of motor fuel for resale to a retail motor fuel outlet.

(6) "Motor fuel" means gasoline, as defined in 15-70-201, alcohol blended with gasoline to produce gasohol, and special fuel as defined in 15-70-301.

(7) "Person" means an individual, a sole proprietorship, a partnership, a corporation, any other form of business entity, or any individual acting on behalf of any of them.

(8) "Posted rack price" means the f.o.b. terminal price for a particular motor fuel that a refiner, producer, or person offers for sale or transfer to itself or any related or unrelated person.

(9) "Refiner" means a person engaged in the production or refining of motor fuel, whether the production or refining occurs in this state or elsewhere, and includes any affiliate of the person.

(10) "Retailer" means a person engaged in the business of selling motor fuel at a retail motor fuel outlet.

(11) "Retail motor fuel outlet" means a place of business where motor fuel is sold and delivered into the tanks of motor vehicles regardless of whether the income from the selling and delivery of the fuel is the primary source of revenue of that business.

(12) "Sale" means a transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means of motor fuel, including a transfer of motor fuel by a person to himself or to his affiliate.

(13) "Transfer price" means the price used by a person to transfer motor fuel to himself or to an affiliate for resale at a retail motor fuel outlet.

(14) "Transportation cost" means the actual cost of transportation of motor fuel or, in the absence of proof of actual cost, the common carrier rates fixed by the public service commission for the immediate market area concerned.

(15) "Wholesaler" means a person engaged in the business of making sales at wholesale to a retail motor fuel outlet. *(Terminates July 1, 1993—sec. 9, Ch. 499, L. 1991.)*

History: En. Sec. 3, Ch. 499, L. 1991.

Compiler's Comments

Effective Date — Termination: Section 9, Ch. 499, L. 1991, provided: "[This act] is effective on passage and approval [approved April 19, 1991] and terminates July 1, 1993."

30-14-804. *(Temporary)* **Below-cost sale prohibited.** (1) A wholesaler may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competition or substantially lessen competition.

(2) A retailer may not sell motor fuel at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy competition or substantially lessen competition.

(3) A wholesaler may not sell or transfer motor fuel to itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy competition or substantially lessen competition.

(4) The provisions of this part do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business;

(b) if motor fuels are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer of sale, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor under the provisions of this section.

(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in 30-14-803, but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section. *(Terminates July 1, 1993—sec. 9, Ch. 499, L. 1991.)*

History: En. Sec. 4, Ch. 499, L. 1991.

Compiler's Comments

Effective Date — Termination: Section 9, Ch. 499, L. 1991, provided: "[This act] is effective on passage and approval [approved April 19, 1991] and terminates July 1, 1993."

30-14-805. *(Temporary)* **Voidance of existing contracts.** A contract, express or implied, made by a person in violation of a provision of this part is void and no recovery may be had on the contract. *(Terminates July 1, 1993—sec. 9, Ch. 499, L. 1991.)*

History: En. Sec. 5, Ch. 499, L. 1991.

Compiler's Comments

Effective Date — Termination: Section 9, Ch. 499, L. 1991, provided: "[This act] is effective on passage and approval [approved April 19, 1991] and terminates July 1, 1993."

30-14-806. *(Temporary)* **Penalty — disposition — relief.** (1) A violation of 30-14-804 is an unfair trade practice.

(2) Upon presentation by an offended party of evidence of a violation of 30-14-804, the department of justice or a county attorney shall issue to the suspected retailer or wholesaler a demand by certified mail to cease the violation. If the violation is not corrected within 24 hours after the suspected retailer or wholesaler receives the notification, the department or the county attorney may bring an action to enjoin the violation.

(3) Upon conviction, a retailer or wholesaler is subject to a civil penalty of not more than $1,000 a day for each day that the violation occurs, is liable for attorney fees, and is subject to injunctive relief.

(4) The department of justice or a county attorney may bring an action for a violation of 30-14-804. If the action is brought by:

(a) the department of justice, one-half of the amount of the penalty must be deposited in the general fund of the county where the action was brought and the remainder in the state general fund; or

(b) a county attorney, the entire amount of the penalty must be deposited in the general fund of the county where the action was brought.

(5) An action under this section must be commenced in the county where the motor fuel is sold.

(6) A person injured as a result of an act or practice that violates 30-14-804 may bring a civil action for appropriate relief, including an action for declaratory judgment, injunctive relief, and actual damages. *(Terminates July 1, 1993—sec. 9, Ch. 499, L. 1991.)*

History: En. Sec. 6, Ch. 499, L. 1991.

Compiler's Comments

Effective Date — Termination: Section 9, Ch. 499, L. 1991, provided: "[This act] is effective on passage and approval [approved April 19, 1991] and terminates July 1, 1993."

Part 9

Price Discrimination

Part Compiler's Comments

Applicability: Section 10, Ch. 486, L. 1991, provided: "The provisions of [this act] [Title 30, ch. 14, part 9] apply to any contract for the sale or purchase of a commodity entered into on or after [the effective date of this act] [effective October 1, 1991]."

30-14-901. Discrimination in price. (1) It is unlawful for a business to discriminate, directly or indirectly, in the price charged to different purchasers of commodities of like grade and quality if the effect of the discrimination upon other businesses or customers is to substantially lessen competition, to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any business that grants or knowingly receives the benefit of the discrimination.

(2) This section does not prohibit:

(a) price differentials that make due allowance for the costs of manufacture, sale, or delivery resulting from the differing methods or quantities in which the commodities are sold or delivered to the purchasers;

(b) businesses engaged in selling commodities from selecting their own customers in bona fide transactions and not in restraint of trade; or

(c) price changes from time to time made in response to changing conditions affecting the market for, or the marketability of, the commodities, including but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasoned goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(3) It is unlawful for a business to discriminate in favor of one purchaser against another purchaser of a processed or unprocessed commodity bought for resale by contracting to furnish, by furnishing, or by contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of the commodity purchased upon terms not accorded to all purchasers on proportionally equal terms.

(4) It is unlawful for a business to knowingly induce or receive a discrimination in price that is prohibited by this section.

(5) This section does not apply to industry members regulated by Title 16, chapters 1 through 6.

History: **En. Sec. 1, Ch. 486, L. 1991.**

30-14-902. Return of net earnings or surplus of cooperative association — exemption of nonprofit institution from price discrimination provision. (1) Section 30-14-901 may not be construed to prevent a cooperative association from returning to its members, producers, or consumers, in proportion to their purchases or sales from, to, or through the association, all or any part of the net earnings or surplus resulting from its trading operations.

(2) Section 30-14-901 does not apply to the purchase of supplies for its own use by a school, college, university, public library, church, hospital, or charitable institution not operated for profit.

History: **En. Sec. 2, Ch. 486, L. 1991.**

30-14-903. Federal interpretation. It is the intent of the legislature that in construing 30-14-901 and 30-14-902, due consideration and weight be given to the interpretations of the federal trade commission and the federal courts relating to the provisions of the federal Robinson-Patman Anti-Discrimination Act regarding discrimination in price that are codified in 15 U.S.C. 13(b) and (c).

History: **En. Sec. 3, Ch. 486, L. 1991.**

30-14-904. Burden of rebutting prima facie case of discrimination. (1) In a proceeding for a violation of 30-14-901, if proof is made that there has been discrimination in price, the burden of rebutting the prima facie case by showing justification is upon the person charged with a violation of 30-14-901.

(2) A seller may rebut the prima facie case by showing that a lower price to a purchaser was made in good faith to meet an equally low price of a competitor.

History: **En. Sec. 4, Ch. 486, L. 1991.**

30-14-905. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of the provisions of 30-14-901 is an illegal contract, and no recovery may be had on the contract.

History: **En. Sec. 5, Ch. 486, L. 1991.**

30-14-906. Injunctions — damages — production of evidence. (1) A person who is injured by a violation of 30-14-901 may maintain an action to enjoin a continuance of an act in violation of 30-14-901 and to recover damages. A court, upon finding that the defendant is violating or has violated the provisions of 30-14-901, shall enjoin the defendant from continuing the violation. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to injunctive relief, the plaintiff may recover from the defendant three times the amount of actual damages sustained plus attorney fees and costs of suit.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of a defendant may be brought into court and introduced into evidence by reference. Information so obtained may not be used against the

defendant as a basis for a misdemeanor prosecution for a violation of 30-14-901.

History: En. Sec. 6, Ch. 486, L. 1991.

Part 10 reserved

Part 11

Plain Language in Contracts

Part Cross-References

Contracts, Title 28, ch. 2.

Interpretation of contracts, Title 28, ch. 3.

Retail installment sales, Title 31, ch. 1, part 2.

Lender to require borrower's acknowledgment when encumbered real property not exempt from execution as homestead, 70-32-221.

30-14-1101. Short title. This part may be cited as the "Plain Language in Contracts Act".

History: En. Sec. 1, Ch. 615, L. 1985.

30-14-1102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means any writing that is substantially prepared in advance of a consumer transaction and which a seller, lessor, or lender furnishes to a consumer for the consumer to sign in connection with that transaction.

(2) "Consumer" means an individual who borrows money or leases or obtains property or services under a written agreement.

(3) "Consumer contract" means an agreement for the sale, lease, or loan of money, property, or services primarily for personal, family, or household purposes.

(4) "Seller, lessor, or lender" means a person who regularly sells, lets, or lends in connection with consumer contracts.

History: En. Sec. 2, Ch. 615, L. 1985.

30-14-1103. Requirements for contracts. (1) A consumer contract must be written in plain language.

(2) A consumer contract is written in plain language if:

(a) it is written in a clear and coherent manner using words with common and everyday meanings;

(b) it is appropriately divided and captioned by its various sections;

(c) it uses type of readable size;

(d) it uses ink that contrasts with the paper.

History: En. Sec. 3, Ch. 615, L. 1985.

30-14-1104. Scope. (1) Except as provided in subsection (2), 30-14-1103 applies to any agreement in connection with a consumer contract entered into in this state between a consumer who is a resident of this state at the time of the transaction and a seller, lessor, or lender.

(2) Section 30-14-1103 does not apply to:

(a) consumer contracts in which the value of the money, property, or services bought, leased, or borrowed exceeds $50,000 at the time of the contract;

(b) consumer contracts in which securities or commodities accounts are bought, leased, or borrowed;

(c) an insurance policy or contract that is subject to the provisions of Title 33;

(d) a seller, lessor, or lender, if it is a government agency or instrumentality;

(e) the provision of public utility service under tariffs approved by the public service commission; or

(f) a transfer of real estate.

(3) The use of specific language expressly required or authorized by a court decision, state or federal statute or administrative rule, or governmental agency is not a violation of this part; nor is a legal description of real property a violation of this part.

History: En. Sec. 4, Ch. 615, L. 1985; amd. Sec. 1, Ch. 185, L. 1987.

Cross-References

GENERAL

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Regulation of utilities, Title 69, ch. 3.

DEFINITIONAL

Securities, 30-10-103.

30-14-1105 through 30-14-1110 reserved.

30-14-1111. Consumer's remedy. (1) Except as otherwise provided in 30-14-1112, if an agreement does not comply with the requirements of 30-14-1103, the seller, lessor, or lender is liable to a consumer who signed the agreement in an amount equal to:

(a) $50 plus any actual damages; and

(b) costs of the action.

(2) A consumer may bring an action under this section in any court of competent jurisdiction.

History: En. Sec. 5, Ch. 615, L. 1985.

30-14-1112. Limitations on remedies. (1) A consumer may not bring an action under 30-14-1111 after the date on which his obligations in connection with the agreement are scheduled to be finally performed.

(2) No seller, lessor, or lender is liable under 30-14-1111 if a good faith attempt is made to comply with requirements of 30-14-1103.

(3) Noncompliance with the requirements of 30-14-1103 does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise noncompliance as a defense to an obligation to perform in connection with the transaction.

(4) In a class action brought under 30-14-1111, the seller, lessor, or lender is liable under 30-14-1111 for not more than $10,000 plus actual damages.

(5) In any individual transaction, if there is more than one consumer who is party to a single-consumer contract, only one award of statutory damages may be made for that transaction.

(6) No consumer may bring an action under this part on a contract if the consumer was represented at the signing of the contract by an attorney.

(7) Punitive damages may not be assessed in an action brought under this part.

History: En. Sec. 6, Ch. 615, L. 1985.

30-14-1113. Remedies cumulative — waiver void. (1) Nothing in this part precludes a consumer from making any claim or raising any defense that would have been available to the consumer if this part were not in effect.

(2) A consumer may not waive the rights provided by this part, and any such waiver is void.

History: En. Sec. 7, Ch. 615, L. 1985.

Cross-References

Contracts which violate public policy of the law, 28-2-702.

What conditions void, 28-2-707.

CHAPTER 15

FOREIGN-TRADE ZONES

Part 1 — General Provisions

30-15-101. Authority to establish, operate, and maintain a foreign-trade zone.
30-15-102. Exemption from state licensing requirements and regulations.
30-15-103. Jurisdiction of state.
30-15-104. Taxation of corporations operating foreign-trade zones and their goods.

Part 1

General Provisions

30-15-101. Authority to establish, operate, and maintain a foreign-trade zone. (1) The state of Montana, a local government unit, or a private or public corporation organized in Montana for the purpose of operating a foreign-trade zone in Montana may apply for the right to and, if the right is granted, establish, operate, and maintain a foreign-trade zone under 19 USC 81a through 19 USC 81u.

(2) The governing body of a local government unit may contract with a private or public corporation to operate and maintain a foreign-trade zone

that the local government unit has been granted the right to establish, operate, and maintain.

(3) Any activity authorized by the United States to be conducted within a foreign-trade zone may be conducted within a foreign-trade zone operated by a local government unit or Montana corporation under this section.

History: **En. Sec. 1, Ch. 674, L. 1979.**

30-15-102. Exemption from state licensing requirements and regulations. Goods may be held within a foreign-trade zone exclusive of any license, permit, or regulation of the state or any political subdivision of the state. Such goods may be sold or traded subject to the laws of the United States.

History: **En. Sec. 2, Ch. 674, L. 1979.**

Cross-References

Licensing — discrimination based on nationality prohibited, 49-3-204.

30-15-103. Jurisdiction of state. The state of Montana reserves jurisdiction in a foreign-trade zone in all civil and criminal matters except those related to customs, diversity suits with the requisite amount in controversy, or suits involving a federal question.

History: **En. Sec. 3, Ch. 674, L. 1979.**

30-15-104. Taxation of corporations operating foreign-trade zones and their goods. Private or public corporations operating foreign-trade zones are subject to all taxes imposed upon them under the provisions of Title 15.

History: **En. Sec. 4, Ch. 674, L. 1979; amd. Sec. 3, Ch. 101, L. 1985.**

Cross-References

Corporation license or income tax, Title 15, ch. 31.

CHAPTER 16

SMALL BUSINESS LICENSING COORDINATION

Part 1 — General Provisions

30-16-101. Short title.
30-16-102. Purpose.
30-16-103. Definitions.

Part 2 — Licensing Coordination Center

30-16-201. Designation of small business licensing coordination center — duties of center.
30-16-202. Information availability.
30-16-203. New licenses, permits, or modifications.

30-16-204. Authority to issue licenses.

Part 1

General Provisions

30-16-101. Short title. This chapter may be cited as the "Montana Small Business Licensing Coordination Act".

History: En. Sec. 1, Ch. 453, L. 1981.

30-16-102. Purpose. The purposes of this chapter are to:

(1) eliminate licensing requirements, administrative procedures, and forms that are unnecessary for the protection of the public interest;

(2) streamline and minimize the total government and business costs of necessary licensing and inspection procedures;

(3) distribute equitably the costs of licensing; and

(4) provide a convenient, accessible, and timely system for the business community to acquire and maintain the necessary state registrations and licenses to conduct business.

History: En. Sec. 2, Ch. 453, L. 1981; amd. Sec. 1, Ch. 744, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning after "eliminate", deleted "retail, wholesale, consumer service, manufacturer, and distributor"; inserted (4) relating to acquisition and maintenance of licenses necessary to conduct business; and made minor changes in style. Amendment effective May 16, 1991.

30-16-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of commerce established in 2-15-1801.

(2) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity. "License" does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, Title 75, and Title 80, which are excluded from the coverage of this chapter.

(3) "Person" means an individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

History: En. Sec. 3, Ch. 453, L. 1981; amd. Sec. 2, Ch. 744, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definitions of Department and person; and made minor changes in style. Amendment effective May 16, 1991.

Part 2

Licensing Coordination Center

30-16-201. Designation of small business licensing coordination center — duties of center. The department shall administer a small business licensing coordination center. The small business licensing coordination center shall:

(1) document and analyze current licensing requirements, fees, and procedures;

(2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;

(3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;

(4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;

(5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;

(6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements;

(7) maintain a supply of license and permit forms or applications for all licenses and actively assist the business community in answering application questions;

(8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;

(9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;

(10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;

(11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process;

(12) perform other administrative tasks delegated to the center to improve state business license administration; and

(13) on January 4, 1993, present a report to the legislature containing its analysis and recommendations as required in subsections (1) through (4).

History: En. Sec. 4, Ch. 453, L. 1981; amd. Sec. 3, Ch. 744, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence substituted "department shall" for "governor shall designate an agency to"; in (7) substituted "business community" for "businessman"; and inserted (13) requiring report to Legislature. Amendment effective May 16, 1991.

Cross-References

State employees — not to assist person in obtaining license for a fee, 2-2-121.

"Agency action" — includes issuing license, 2-3-102.

"License" defined, 2-4-102.

Licenses — administrative procedure, 2-4-631.

Purpose of agency evaluation, 2-8-101.

Licensing — within quasi-judicial function, 2-15-102.

City Courts — jurisdiction for collection of license fee of city, 3-11-103.

Delegation of authority — includes licensing, 5-4-403.

Ferries — establishment and license tax, Title 7, ch. 14, part 28.

License for street railroad, 7-14-4303.

General county licensing authority, Title 7, ch. 21, part 21.

Licensing of itinerant vendors, Title 7, ch. 21, part 23.

Licensing of transient retail merchants, Title 7, ch. 21, part 24.

Licensing of hucksters, Title 7, ch. 21, part 25.

Municipal licensing authority, Title 7, ch. 21, part 41.

Regulation of certain activities, 7-21-4201.

Licensing and regulating vehicles engaged in transporting persons and property, 7-21-4205.

Suspension of license fees for persons in military service, 10-1-605.

State Tax Appeal Board — appeals regarding business licenses, 15-2-201.

Freight line company license tax, Title 15, ch. 55, part 1.

License tax on producers and importers of gypsum and cement, 15-59-102.

License tax on sales of cement and byproducts, 15-59-201.

License and security of gasoline distributors, 15-70-202.

License to sell gasoline on which refund may be claimed, 15-70-203.

Special fuel dealer's licenses, 15-70-302.

Beer and wine licenses, Title 16, ch. 4, part 1.

All-beverages licenses, Title 16, ch. 4, part 2.

Special alcoholic beverage licenses, Title 16, ch. 4, part 3.

Cigarette licenses, 16-11-120.

Licensing textbook dealers, 20-7-604.

Race meet licensing, 23-4-201.

Card games — licensing by local governing bodies, 23-5-321.

Auctions — licensing powers of cities and towns, 30-11-516.

Licensing of weighing devices, 30-12-203.

Foreign-trade zone — exemption from state licensing requirements, 30-15-102.

Employment agency licensing, Title 39, ch. 5, part 2.

Foster home licensing, 41-3-1141.

Licensing nondiscrimination, 49-3-204.

Emergency medical service licensing, 50-6-306.

Fire protection equipment — licensing, 50-39-101.

Food establishments — licensing, Title 50, ch. 50, part 2.

Hotel and motel licensing, Title 50, ch. 51, part 2.

Tourist campground and trailer court licensing, Title 50, ch. 52, part 2.

Day-care center licensing, 52-2-721.

Adult foster family care licensure, 52-3-303.

Aeronautics licensing, Title 67, ch. 3.

Portable sawmill license, 76-13-502.

Slaughterhouse license, 81-9-201.

Licensing of rendering or disposal plants, 81-9-301.

Hide dealer or buyer's license fee, 81-9-411.

Egg dealer's and egg grader's license, 81-20-201.

Licensing of milk plants and dairies selling milk or cream for public consumption, 81-21-102.

License required to operate manufactured dairy products plant, 81-22-201.

License required for milk or cream route, 81-22-204.

Milk — licenses to producers, producer-distributors, distributors, and jobbers, 81-23-201.

Petroleum dealer licenses, 82-15-105.

Wharves and docks licenses, 85-16-101.

30-16-202. Information availability. The small business licensing coordination center shall encourage and invite federal and local government agencies to make license and permit information available to applicants through the coordination center. The center shall, where possible, advise applicants of federal and local government agency license and permit requirements.

History: En. Sec. 7, Ch. 453, L. 1981.

Cross-References

Ferries — establishment and license tax, Title 7, ch. 14, part 28.

License for street railroad, 7-14-4303.

General county licensing authority, Title 7, ch. 21, part 21.

Licensing of itinerant vendors, Title 7, ch. 21, part 23.

Licensing of transient retail merchants, Title 7, ch. 21, part 24.

Licensing of hucksters, Title 7, ch. 21, part 25.

Municipal licensing authority, Title 7, ch. 21, part 41.

Regulation of certain activities, 7-21-4201.

Licensing and regulating vehicles engaged in transporting persons and property, 7-21-4205.

30-16-203. New licenses, permits, or modifications. Each state agency shall report to the coordination center any new license or permit or modification of an existing license or permit that becomes effective as a requirement after April 20, 1981, together with the applicable forms and pertinent rules and information.

History: En. Sec. 8, Ch. 453, L. 1981.

30-16-204. Authority to issue licenses. Regardless of any authority delegated to the department to implement the provisions of this chapter, the authority to issue a license remains with the agency authorized by law to issue the license.

History: En. Sec. 4, Ch. 744, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 744, L. 1991, provided: "[This act] is effective on passage and approval." Approved May 16, 1991.

TITLE 31

CREDIT TRANSACTIONS AND RELATIONSHIPS

Ch.

1. Credit Transactions.
2. Debtor and Creditor Relationships.
3. Related Credit Practices.

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CREDIT TRANSACTIONS

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31-1-304. Restrictions upon assignment of wages or salary.
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31-1-306. Spouse must join in assignment of wages — acknowledgment.
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Chapter Cross-References

Creation of state debt, Art. VIII, sec. 8, Mont. Const.

Debt limitations of local government entities, Art. VIII, sec. 10, Mont. Const.

Use of money borrowed by local government entity, Art. VIII, sec. 11, Mont. Const.

Functions of Department of Commerce, 2-15-1801.

Trust indentures and mortgages under housing law, 7-15-4463, 7-15-4506, 7-15-4521 through 7-15-4532.

Lending money for educational purposes, 20-30-402.

Gambling on cash basis, 23-5-157.

U.C.C. — sales, Title 30, ch. 2.

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — letters of credit, Title 30, ch. 5.

U.C.C. — secured transactions, Title 30, ch. 9.

Sales of property, Title 30, ch. 11, part 2.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Authority of state banks to make real estate loans, 32-1-430, 32-1-431.

False statement to obtain loan, 32-1-474.

Credit life insurance, Title 33, ch. 21, part 1.

Attorneys prohibited from purchasing claims for purpose of bringing action thereon, 37-61-408.

Defrauding creditors, 45-6-315.

Issuing a bad check, 45-6-316.

Deceptive practices, 45-6-317.

Chain distributor schemes, 45-6-319.

Discrimination in credit prohibited, 49-2-101, 49-2-307, 49-3-206.

Method of filing lien on motor vehicles, 61-3-103.

Monopolies in financing sale of motor vehicles, Title 61, ch. 4, part 4.

Mortgages generally, Title 71, ch. 1.

Small Tract Financing Act of Montana, Title 71, ch. 1, part 3.

Pledges, Title 71, ch. 2.

Liens, Title 71, ch. 3.

Renewable resource development loans, Title 90, ch. 2, part 1.

Part 1

Loans of Money — Interest Rates

Part Cross-References

Rate of interest chargeable by building and loan associations, 32-2-401 through 32-2-406.

31-1-101. Loan of money — what constitutes. A loan of money is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the law on loan for use.

History: En. Sec. 2580, Civ. C. 1895; re-en. Sec. 5206, Rev. C. 1907; re-en. Sec. 7720, R.C.M. 1921; Cal. Civ. C. Sec. 1912; Field Civ. C. Sec. 966; re-en. Sec. 7720, R.C.M. 1935; R.C.M. 1947, 47-119.

Cross-References

Financing programs of Board of Investments, 17-5-1505.

Contracts, Title 28, ch. 2, 3.

Assignment to be considered a loan, 31-1-308.

Banks borrowing money — limitations, 32-1-412.

Banks borrowing money for capital purposes — status of capital, 32-1-413.

Authority of state banks to make real estate loans, 32-1-430.

Limitation on real estate loans, 32-1-431.

Limitation on loans, 32-1-432.

Loans to managing officer or director, 32-1-467.

False statement to obtain loan, 32-1-474.

Building and loan associations — limitation on loans, 32-2-415.

Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944, 32-2-420.

National Housing Act loans, Title 32, ch. 2, part 5.

Credit unions — loans and insurance, Title 32, ch. 3, part 6.

Development Corporation Act — purposes, 32-4-102.

Consumer loan businesses, Title 32, ch. 5.

Deceptive practices — false statement to obtain loan, 45-6-317.

Loans for use or exchange — personal property, Title 70, ch. 7.

Rangeland improvement loan program, 76-14-111.

Conservation practice loan program, 76-15-541.

Agricultural loan authority — general provisions of loan agreements, 80-12-201.

Alternative or renewable energy grants or loans, Title 90, ch. 4, part 1.

Health facility authority — loan limitation, 90-7-213.

31-1-102. Loan to be repaid in current money. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

History: En. Sec. 2581, Civ. C. 1895; re-en. Sec. 5207, Rev. C. 1907; re-en. Sec. 7721, R.C.M. 1921; Cal. Civ. C. Sec. 1913; Field Civ. C. Sec. 967; re-en. Sec. 7721, R.C.M. 1935; R.C.M. 1947, 47-120.

Cross-References

Contracts, Title 28, ch. 2, 3.

"Money" defined, 30-1-201.

Money of account, Title 30, ch. 12, part 6.

31-1-103. Loan presumed to be on interest. Whenever a loan of money is made, it is presumed to be made upon interest unless it is otherwise expressly stipulated at the time in writing.

History: En. Sec. 2582, Civ. C. 1895; re-en. Sec. 5208, Rev. C. 1907; re-en. Sec. 7722, R.C.M. 1921; Cal. Civ. C. Sec. 1914; Based on Field Civ. C. Sec. 968; re-en. Sec. 7722, R.C.M. 1935; R.C.M. 1947, 47-121.

Cross-References

Interest payable at bank on Saturday — how paid, 32-1-485.

Limit on interest and penalties — building and loan associations, 32-2-402.

Statement of interest rates — canceling loans, 32-2-403.

Loan for use, Title 70, ch. 7, part 1.

Loan for exchange, Title 70, ch. 7, part 2.

31-1-104. Interest defined. Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money.

History: En. Sec. 2583, Civ. C. 1895; re-en. Sec. 5209, Rev. C. 1907; re-en. Sec. 7723, R.C.M. 1921; Cal. Civ. C. Sec. 1915; Based on Field Civ. C. Sec. 969; re-en. Sec. 7723, R.C.M. 1935; R.C.M. 1947, 47-122.

31-1-105. Annual rate. When a rate of interest is prescribed by a law or contract without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

History: En. Sec. 2584, Civ. C. 1895; re-en. Sec. 5210, Rev. C. 1907; re-en. Sec. 7724, R.C.M. 1921; Cal. Civ. C. Sec. 1916; Field Civ. C. Sec. 970; re-en. Sec. 7724, R.C.M. 1935; R.C.M. 1947, 47-123.

31-1-106. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code or 31-1-111 and 31-1-112, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 10% a year after they become due on:

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and

(d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year.

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R.C.M. 1921; Cal. Civ. C. Sec. 1917; amd. Sec. 1, Ch. 144, L. 1933; re-en. Sec. 7725, R.C.M. 1935; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971; amd. Sec. 11, Ch. 185, L. 1977; R.C.M. 1947, 47-124; amd. Sec. 3, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 263, L. 1985.

Cross-References

Rate of interest on bonds — limitations and exceptions, 17-5-102.

Rate of interest on special assessments — limitations, 17-5-103.

Amount of interest on judgments, 25-9-205.

Damage claims — interest, 27-1-211.

Validity of interest rate set by contract, 27-1-213.

Acceptance of principal waives claim to interest, 27-1-214.

Offer of performance stops running of interest, 28-1-1202.

General validity of security agreement, 30-9-201.

31-1-107. Interest rate allowed by agreement. (1) Parties may agree in writing for the payment of any rate of interest not more than 6 percentage points per annum above the prime rate of major New York banks as published in the Wall Street Journal edition dated 3 business days prior to the execution of the agreement, and such interest shall be allowed according to the terms of the agreement.

(2) A loan that is not usurious when made is lawful for the duration of the loan, provided the loan agreement is not substantially changed. This subsection does not apply to loan renewals.

(3) The provisions of this section do not apply to regulated lenders as defined in 31-1-111.

History: **En. Sec. 2586, Civ. C. 1895; re-en. Sec. 5212, Rev. C. 1907; amd. Sec. 1, Ch. 36, L. 1913; amd. Sec. 1, Ch. 62, L. 1919; re-en. Sec. 7726, R.C.M. 1921; Cal. Civ. C. Sec. 1918; re-en. Sec. 7726, R.C.M. 1935; amd. Sec. 1, Ch. 503, L. 1975; R.C.M. 1947, 47-125; amd. Sec. 2, Ch. 373, L. 1979; amd. Sec. 4, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 567, L. 1983.**

Cross-References

Amount of interest on judgments, 25-9-205.

Limit of rate by contract, 27-1-213.

Wage brokers — rate, 31-1-305.

Pawnbrokers — interest, 31-1-401.

Building and loan associations — rate, 32-2-402.

Consumer loan businesses — rate, 32-5-301.

Conservation practice loan program — rate set by rule, 76-15-547.

Montana agricultural loan authority — rate, 80-12-201.

Health facility authority — rate, 90-7-202.

31-1-108. Penalty for usury — action to recover excessive interest. (1) The taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107 shall be deemed a forfeiture of a sum double the amount of interest which the note, bill, or other evidence of debt carries or which has been agreed to be paid thereon.

(2) When a greater rate of interest has been paid, the person by whom it has been paid, his heirs, assigns, executors, or administrators may recover from the person, firm, or corporation taking, receiving, reserving, or charging same a sum double the amount of interest so paid, provided that such action shall be brought within 2 years after the payment of said interest, and provided that, before any suit may be brought to recover such usurious interest, the party bringing suit must make written demand for return of said interest so paid.

History: **En. Sec. 2, Ch. 36, L. 1913; re-en. Sec. 7727, R.C.M. 1921; re-en. Sec. 7727, R.C.M. 1935; R.C.M. 1947, 47-126.**

Cross-References

Amount of interest on judgments, 25-9-205.

Right to interest, 27-1-211.

Actions to enforce penalty or forfeiture or other statutory liability, 27-2-211.

31-1-109. When interest becomes part of principal. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that, if the interest on such debt is not punctually paid, it shall become a part of the principal and thereafter bear the same rate of interest as the principal debt.

History: **En. Sec. 2587, Civ. C. 1895; re-en. Sec. 5213, Rev. C. 1907; re-en. Sec. 7728, R.C.M. 1921; Cal. Civ. C. Sec. 1919; re-en. Sec. 7728, R.C.M. 1935; R.C.M. 1947, 47-127.**

Cross-References

Amount of interest on judgment, 25-9-205.

Written contracts, Title 28, ch. 2, part 9.

31-1-110. Renumbered 25-9-205 by Code Commissioner, 1979.

31-1-111. Definition of regulated lender. The term "regulated lenders" as used in 31-1-112 means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money.

History: En. Sec. 1, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 406, L. 1985; amd. Sec. 1, Ch. 294, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "bank holding company", inserted "or a mutual or stock insurance company".

Cross-References

Banks and trust companies, Title 32, ch. 1.

Building and loan associations, Title 32, ch. 2.

Credit unions, Title 32, ch. 3.

Development corporations, Title 32, ch. 4.

Consumer loan businesses, Title 32, ch. 5.

31-1-112. Interest rate limitation exemption — regulated lenders — merchant finance. (1) A regulated lender is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

(2) A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits.

History: (1)En. Sec. 2, Ch. 275, L. 1981; (2)En. Sec. 4, Ch. 276, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 22, L. 1983.

31-1-113. Limitation of rule of 78ths. The sum of the monthly time balances method of computing interest or refunds on prepayment, which is also known as the rule of 78ths, may not be used in any loan agreement or retail installment contract unless the term of the loan or contract does not exceed 61 months.

History: En. Sec. 3, Ch. 135, L. 1983.

Cross-References

Requirements of retail installment contracts, 31-1-231.

Refunds on prepayment, 31-1-242.

Consumer loan businesses — changes, 32-5-301.

Part 2

Retail Installment Sales

Part Cross-References

U.C.C. — sales, Title 30, ch. 2.

Purchase of chattel paper and instruments, 30-9-308.

Sales, Title 30, ch. 11.

Door-to-door sales, Title 30, ch. 14, part 5.

Montana Consumer Loan Act, Title 32, ch. 5.

Loans for use, Title 70, ch. 7, part 1.

31-1-201. Short title. This part may be cited as the "Montana Retail Installment Sales Act".

History: En. Sec. 1, Ch. 282, L. 1959; R.C.M. 1947, 74-601.

31-1-202. Definitions. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof, whether or not severable from it.

(e) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers; the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(g) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting, however, any vehicle which runs only on rails or tracks or in the air.

(h) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge as defined in this section may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if so engaged. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made therefor, and the amounts of the official fees and the finance charge.

(2) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this part pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

History: En. Sec. 2, Ch. 282, L. 1959; amd. Sec. 1, Ch. 416, L. 1971; amd. Sec. 137, Ch. 431, L. 1975; R.C.M. 1947, 74-602; amd. Sec. 1, Ch. 160, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 13, Ch. 516, L. 1985; amd. Sec. 1, Ch. 297, L. 1987.

Cross-References

Fees of Clerk of District Court, 25-1-201.

Contract defined, 28-2-101.

U.C.C. — "buyer in ordinary course of business" defined, 30-1-201.

U.C.C. — "holder" defined, 30-1-201.

U.C.C. — "goods" defined, 30-2-105.

U.C.C. — "sale" defined, 30-2-106.

U.C.C. — commercial paper — rights of a holder, Title 30, ch. 3, part 3.

"Motor vehicle" defined, 61-1-102.

"Motorcycle" defined, 61-1-105.

"Camper" defined, 61-1-129.

"Quadricycle" defined, 61-1-133.

31-1-203. Penalties. (1) Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 31-1-231 through 31-1-243, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance, delinquency, or collection charge on the contract.

History: En. Sec. 11, Ch. 282, L. 1959; amd. Sec. 16, Ch. 185, L. 1977; amd. Sec. 3, Ch. 284, L. 1977; R.C.M. 1947, 74-611.

Cross-References

Actions to enforce penalty or forfeiture or other statutory liability, 27-2-211.

"Misdemeanor" defined, 45-2-101.

31-1-204. Waiver. Any waiver of the provisions of this part shall be unenforceable and void.

History: En. Sec. 12, Ch. 282, L. 1959; R.C.M. 1947, 74-612.

Cross-References

Contracts which violate the policy of the law — exemption from responsibility, 28-2-702.

31-1-205 through 31-1-210 reserved.

31-1-211. Powers of department. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. All rules of general application shall be filed in the office of the department. A copy of every rule shall be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt him from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by it, the department may apply to the judge of the court issuing the subpoena for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that person and, upon his being brought before the judge, proceed to a hearing of the case. The judge may compel:

(a) obedience to the subpoena;

(b) the answering of any question;

(c) the production of any evidence that may be proper; or

(d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of subsections (4)(a), (b), or (c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both.

History: En. Sec. 6, Ch. 282, L. 1959; amd. Sec. 140, Ch. 431, L. 1975; amd. Sec. 15, Ch. 185, L. 1977; R.C.M. 1947, 74-606.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contempts, Title 3, ch. 1, part 5.

Powers and duties of Department, 20-30-201.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Department authority, 30-14-114.

Investigations, 30-14-221.

Examination and supervision by Department, 32-1-211.

Reports and accounts prescribed by Department, 32-2-302.

Examinations, 32-3-203.

Access to records — witnesses, 32-5-404.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Entry, inspection, and investigation, 81-23-401.

31-1-212. Investigations and complaints. (1) The department may make those investigations it considers necessary, and to the extent necessary for this purpose, it may examine a licensee or any other person and may compel the production of relevant books, records, accounts, and documents.

(2) A retail buyer having reason to believe that this part relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of the alleged violation, and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved.

History: En. Sec. 5, Ch. 282, L. 1959; amd. Sec. 139, Ch. 431, L. 1975; R.C.M. 1947, 74-605.

Cross-References

Subpoena for production of documentary evidence, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Consumer protection — Department investigations, 30-14-221.

Discrimination in credit transactions, 49-2-403.

31-1-213 through 31-1-220 reserved.

31-1-221. Licensing of sales finance companies required. (1) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this part, except that no bank, trust company, or savings and loan association authorized to do business in this state shall be required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for such license shall be in writing, under oath, and in the form prescribed by the department. The application shall contain:

(a) the name of the applicant;

(b) date of incorporation, if incorporated;

(c) the address where the business is or is to be conducted and similar information as to any branch office of the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) such other pertinent information as the department may require.

(3) The license fee for each calendar year or part thereof shall be the sum of $100 for each place of business of the licensee in this state.

(4) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the department shall endorse the change of location of the license without charge.

(5) Upon the filing of such application and the payment of said fee, the department shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this

part for a period which shall expire December 31 next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this part under any other name.

(6) Fees collected under this chapter shall be deposited in the state special revenue fund for the use of the department in its supervision function.

History: En. Sec. 3, Ch. 282, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 74-603; amd. Sec. 8, Ch. 600, L. 1985.

Cross-References

Fund structure, 17-2-102.

Consumer loan businesses — licensure requirements, Title 32, ch. 5, part 2.

31-1-222. Denial, suspension, or revocation of licenses. (1) Renewal of a license originally granted under 31-1-221 may be denied or a license may be suspended or revoked by the department on the following grounds:

(a) material misstatement of fact in the application for license;

(b) willful failure to comply with any provision of this part relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this part.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of his employees while acting as his agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice shall contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license shall recite the grounds upon which it is based. The order shall be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at his principal place of business.

(c) No revocation, suspension, or surrender of a license impairs or affects the obligation of a lawful retail installment contract acquired previously by the licensee.

History: En. Sec. 4, Ch. 282, L. 1959; amd. Sec. 138, Ch. 431, L. 1975; amd. Sec. 14, Ch. 185, L. 1977; R.C.M. 1947, 74-604.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Contractual provisions relating to fraud, 28-2-404 through 28-2-406.

Principal's responsibility for agent's negligence, omissions, and wrongs, 28-10-602.

Department to restrain unlawful acts, 30-14-111.

Consumer loan businesses — revocation and suspension of license, 32-5-207.

Unsworn falsification to authorities, 45-7-203.

31-1-223 through 31-1-230 reserved.

31-1-231. Requirements of retail installment contracts. (1) Each retail installment contract shall be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien, or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such case, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in such case such document, together with the sales slip, account book, or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.

(2) The printed portion of the contract, other than instructions for completion, shall be in at least 8-point type. The contract shall contain the following notice in a size equal to at least 10-point bold type:

"1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.

2. You are entitled to an exact copy of the contract you sign.

3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or services furnished or to be furnished and shall clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract shall contain the following items:

(a) the cash sale price of the goods or services;

(b) the amount of the buyer's down payment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;

(c) the difference between items (a) and (b);

(d) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits;

(e) the amount of official fees;

(f) the principal balance which is the sum of items (c), (d), and (e);

(g) the amount of the finance charge;

(h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items (f) and (g), payable in installments by the buyer to the seller;

(i) the number of installments;

(j) the amount of each installment; and

(k) the due date or period of installments.

(6) The items in (5) need not be stated in the sequence or order set forth, and additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) No retail installment contract may be signed by any party thereto when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract shall, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract, be conclusive proof:

(a) of such delivery;

(b) that the contract when signed did not contain any blank spaces except as herein provided; and

(c) of compliance with 31-1-231 through 31-1-236.

(8) If a retail installment transaction is subject to the federal Truth in Lending Act (15 U.S.C. 1601-1667e), the seller may, instead of complying with the requirements of subsections (2) through (7), comply with all such requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1) of this section.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 1, Ch. 88, L. 1979; amd. Sec. 1, Ch. 89, L. 1985.

Cross-References

What contracts must be in writing, 28-2-903.

Consumer loan businesses — installment payment — contract period, 32-5-302.

Borrower to receive copy of contract or statement of contents, 32-5-303.

Motor vehicles — certain financing agreements prohibited, 61-4-403.

31-1-232. Buyer's right of rescission. The seller shall deliver to the buyer or mail to him at his address shown in the contract a copy of the contract, signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

Cross-References

Acknowledgment, Title 1, ch. 5, part 2.

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

U.C.C. — sales — manner and effect of rightful rejection, 30-2-602.

31-1-233. Insurance. (1) The amount, if any, included for insurance that may be purchased by the holder of the contract may not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state where the rates are required by law to be approved by the insurance department.

(2) All insurance purchased by the holder of the contract must be written by an insurance company authorized to do business in this state and must be countersigned by a duly licensed resident insurance producer authorized to engage in the insurance business in this state.

(3) A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or holder as well as the buyer, but the insurance is limited to insurance against substantial risk of loss, damage, or destruction of the goods.

(4) Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer.

(5) If insurance for which an identified charge is made insures the life, safety, or health of the buyer or his interest in the goods and is purchased by the holder, the holder shall within 30 days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth:

(a) the amount of the premium;

(b) the kind or kinds of insurance;

(c) the coverages; and

(d) if a policy, all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance or, if a certificate, a summary of the terms, exceptions, limitations, restrictions, and conditions.

(6) The seller may not decline existing insurance written by an insurance company authorized to do business in this state, and the buyer has the privilege of purchasing insurance from an insurance producer or broker of his own selection and of selecting his insurance company, provided that:

(a) the insurance company is acceptable to the holder, which acceptance may not be unreasonably or arbitrarily withheld; and

(b) the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects his insurance producer, broker, or company is optional with the seller.

(7) If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder must be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 34, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: In (2) and two places in (6) substituted "agent" for "insurance producer"; and made minor changes in style.

Cross-References

U.C.C. — sales — insurable interest in goods — manner of identification of goods, 30-2-501.

Accounts, contract rights, general intangibles and equipment relating to another jurisdiction — incoming goods already subject to a security interest, 30-9-103.

Consumer loan businesses — insurance, 32-5-306.

Insurance — compliance with Code required, 33-1-102.

Commissioner of Insurance — general powers and duties, 33-1-311.

31-1-234. Transfer of equity — fee. A buyer may transfer his equity in the goods at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed $50.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 1, Ch. 434, L. 1983.

Cross-References

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Assignment of nonnegotiable written contract, 28-2-206.

U.C.C. — sales — delegation of performance — assignment of rights, 30-2-210.

31-1-235. Delinquency fee. The holder may collect a delinquency charge on each installment in default for a period not less than 10 days in an amount not in excess of 5% of each installment or $5, whichever is less, or in lieu thereof, interest after maturity on each such installment not exceeding the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorneys' fees not exceeding 15% of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with such delinquency.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Contractual right to attorney fees treated as reciprocal, 28-3-704.

Consumer loan businesses — deferral charge permitted — nature of deferral charge, 32-5-321.

31-1-236. Notice and receipt of payment. (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(2) After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part).

Cross-References

U.C.C. — secured transactions — termination statement, 30-9-404.

Consumer loan businesses — receipts — return of note, 32-5-304.

31-1-237 through 31-1-240 reserved.

31-1-241. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall be at a rate agreed upon by the retail seller and the buyer.

(2) Notwithstanding the provisions of any other law, the finance charge included in a retail charge account agreement shall be at a rate agreed upon by the retail seller and the buyer.

(a) Except as provided in subsection (2)(b), the finance charge shall be computed from month to month (which need not be a calendar month) or other regular billing cycle period by using the average daily balance of the account during the billing cycle without including in the computation the amount of purchases charged to the account during that billing cycle.

(b) Nothing in this section prevents a retail seller and a buyer from agreeing to the computation of the finance charge by using the ending balance of the account as of the last day of the billing cycle period less the amount of purchases charged to the account during that billing cycle.

(3) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(4) If the retail seller increases his finance charge on a retail charge account agreement, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(5) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(6) If the finance charge determined pursuant to subsection (2) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for such period.

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963; amd. Sec. 2, Ch. 416, L. 1971; amd. Sec. 1, Ch. 252, L. 1975; amd. Sec. 1, Ch. 284, L. 1977; R.C.M. 1947, 74-608; amd. Sec. 2, Ch. 160, L. 1979; amd. Secs. 1, 2, Ch. 276, L. 1981; amd. Secs. 1, 3, Ch. 22, L. 1983; amd. Sec. 2, Ch. 297, L. 1987.

Cross-References

"Interest" defined, 31-1-104.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consumer loan businesses — charges, refunds, penalties, filing fees, 32-5-301.

31-1-242. Refunds on prepayment. (1) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments.

(2) In a contract where the period of the contract does not exceed 61 months, the amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning 1 month after prepayment is made bears to the sum of all the

monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than $1, no refund need be made.

(3) In any contract where the period of the contract exceeds 61 months, the amount of such refund is the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose, the applicable charge is the charge that would have been earned for that period if the contract were not precomputed, by applying to the unpaid principal balance, according to the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled.

History: En. Sec. 9, Ch. 282, L. 1959; R.C.M. 1947, 74-609; amd. Sec. 1, Ch. 135, L. 1983.

Cross-References

Consumer loan businesses — charges, refunds, penalties, filing fees, 32-5-301.

31-1-243. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to said date, times the number of months in which no scheduled payment is made.

History: En. Sec. 10, Ch. 282, L. 1959; amd. Sec. 2, Ch. 284, L. 1977; R.C.M. 1947, 74-610; amd. Sec. 2, Ch. 88, L. 1979; amd. Sec. 3, Ch. 276, L. 1981; amd. Sec. 1, Ch. 22, L. 1983.

Cross-References

When interest becomes part of principal, 31-1-109.

Consumer loan businesses — deferral charge permitted — nature of deferral charge, 32-5-321.

Consumer loan businesses — deferral charge — rate, 32-5-322.

Part 3

Wage Brokers

31-1-301. Wage brokers to procure license and give bond. No person, company, corporation, or association may establish or conduct the business of wage broker within the state unless such person, company, corporation, or association procures a license from the proper authorities and executes a bond in such sum as the authorities may require for the faithful carrying out of the provisions of this part and of the ordinances of any town or city in which the business may be carried on.

History: En. Sec. 1, Ch. 56, L. 1911; re-en. Sec. 4173, R.C.M. 1921; re-en. Sec. 4173, R.C.M. 1935; R.C.M. 1947, 41-1501; amd. Sec. 3, Ch. 88, L. 1979.

31-1-302. Issuance of license — terms and amount thereof. The board of county commissioners of any county in this state or, in case said business be carried on in any incorporated city or town, the city council or board of trustees of said city or town may in its discretion, from time to time, grant licenses to any person or persons, company, corporation, or association to conduct or carry on the business of wage broker upon payment of such sum therefor and upon such terms and conditions as the said board of county commissioners or city council or board of trustees shall by resolution or ordinance require.

History: En. Sec. 2, Ch. 56, L. 1911; re-en. Sec. 4174, R.C.M. 1921; re-en. Sec. 4174, R.C.M. 1935; R.C.M. 1947, 41-1502.

Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

General licensing authority of municipalities, 7-21-4101.

Licensing — discrimination prohibited, 49-3-204.

31-1-303. Wage broker defined. Any person, company, corporation, or association parting with, giving, or loaning money, either directly or indirectly, to any employee or wage earner, upon the security of or in consideration of any assignment or transfer of wages or salary of such employee or wage earner, shall be deemed to be a wage broker within the meaning of this part.

History: En. Sec. 3, Ch. 56, L. 1911; re-en. Sec. 4175, R.C.M. 1921; re-en. Sec. 4175, R.C.M. 1935; R.C.M. 1947, 41-1503.

31-1-304. Restrictions upon assignment of wages or salary. No assignment of his or her wages or salary by any employee or wage earner to any wage broker for his or her benefit shall be valid or enforceable, nor shall any employer or debtor recognize or honor such assignment for any purpose whatever, unless it be for a fixed and definite part or all of the wages or salary theretofore earned.

History: En. Sec. 4, Ch. 56, L. 1911; re-en. Sec. 4176, R.C.M. 1921; re-en. Sec. 4176, R.C.M. 1935; R.C.M. 1947, 41-1504.

Cross-References

Wage assignments — limitations, 32-5-310.

31-1-305. Interest on loans — amount and computation. No wage broker shall ask, demand, or receive, either as compensation or interest or in any other manner, directly or indirectly, any compensation or interest for the use of money advanced or loaned by him to any employee or wage earner in excess of 12% per annum. Said compensation or rate of interest shall be computed upon the amount actually advanced to and received by the employee or wage earner and shall include all commissions or compensation whatsoever to the wage broker or any other person for making or procuring said loan.

History: En. Sec. 5, Ch. 56, L. 1911; re-en. Sec. 4177, R.C.M. 1921; re-en. Sec. 4177, R.C.M. 1935; R.C.M. 1947, 41-1505.

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consumer loan businesses — charges, refunds, penalties, filing fees, 32-5-301.

31-1-306. Spouse must join in assignment of wages — acknowledgment. No assignment of wages or salary to a wage broker by a married person who shall have a spouse residing in this state shall be valid or enforceable without the consent of such spouse, evidenced by the spouse's signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments. No wage broker or person connected with a wage broker, directly or indirectly, shall be authorized to take any such acknowledgments.

History: En. Sec. 6, Ch. 56, L. 1911; re-en. Sec. 4178, R.C.M. 1921; re-en. Sec. 4178, R.C.M. 1935; amd. Sec. 23, Ch. 535, L. 1975; R.C.M. 1947, 41-1506.

Cross-References

By whom and where acknowledgments may be taken, 1-5-101.

Acknowledgment, Title 1, ch. 5, part 2.

Wage assignments — limitations, 32-5-310.

Earnings and accumulations of married person, 40-2-205.

Work and labor of married person, 40-2-207.

31-1-307. Assignments invalid without notice to employer — filing assignments. No assignment of wages or salary to a wage broker shall be valid or enforceable unless notice in writing of the same, accompanied by a copy of the assignment, shall be given to the employer within 1 day from the date of its execution. All assignments shall be filed in the office of the county clerk of the county where the assignor resides, and no assignment shall be valid unless so filed.

History: En. Sec. 7, Ch. 56, L. 1911; re-en. Sec. 4179, R.C.M. 1921; re-en. Sec. 4179, R.C.M. 1935; R.C.M. 1947, 41-1507.

Cross-References

Role and duties of county clerk, 7-4-2611.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

31-1-308. Assignment to be considered a loan. Every purchase by a wage broker of an assignment of the wages or salary of any employee or wage earner shall be held and considered a loan, in the sum of the amount actually paid to and received by such employee or wage earner, and shall be subject to all the provisions of this part.

History: En. Sec. 8, Ch. 56, L. 1911; re-en. Sec. 4180, R.C.M. 1921; re-en. Sec. 4180, R.C.M. 1935; R.C.M. 1947, 41-1508.

Cross-References

Loan of money — what constitutes, 31-1-101.

Engaging in business of making loans restricted, 32-5-103.

Wage assignments — limitations, 32-5-310.

31-1-309. Violation — penalties. Any person, company, corporation, or association and any officer, member, agent, or employee thereof violating any or either of the provisions of 31-1-301 to 31-1-308, both inclusive, shall be deemed guilty of a misdemeanor and upon conviction shall be liable to a fine in the sum of not less than $100 or more than $500 for each offense or to imprisonment in the county jail for a period not to exceed 90 days, or both, and in addition thereto the debt and accrued interest thereon shall be discharged and the security shall be void.

History: En. Sec. 9, Ch. 56, L. 1911; re-en. Sec. 4181, R.C.M. 1921; amd. Sec. 1, Ch. 112, L. 1929; re-en. Sec. 4181, R.C.M. 1935; R.C.M. 1947, 41-1509.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

31-1-310. When note, instrument, or assignment void. Any note, bill, or other evidence of indebtedness and any assignment of wages or salary given to or received by any wage broker in violation of any of the provisions of this part shall be void as against the creditors of the assignor or transferor.

History: En. Sec. 10, Ch. 56, L. 1911; re-en. Sec. 4182, R.C.M. 1921; re-en. Sec. 4182, R.C.M. 1935; R.C.M. 1947, 41-1510.

Cross-References

When contract wholly void, 28-2-603.

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Part 4

Pawnbrokers

Part Cross-References

Regulation of pawnbrokers located outside incorporated city or town — definition, 7-21-2120.

Regulation of pawnbrokers by city government, 7-21-4201, 7-21-4207, 7-21-4208.

Theft by disposal of stolen property, 45-6-314.

Pawnbroker to surrender stolen property, 46-5-212.

31-1-401. Interest pawnbrokers may receive. No person may carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or his employees or agents may not charge more than 3% a month for interest, commission, discount, storage, and caring for property pledged.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3310, Pol. C. 1895; Sec. 2105, Rev. C. 1907; re-en. Sec. 4186, R.C.M. 1921; re-en. Sec. 4186, R.C.M. 1935; amd. Sec. 12, Ch. 185, L. 1977; R.C.M. 1947, 66-1601.

Cross-References

Regulation of pawnbrokers, 7-21-2120.

Cities may license, 7-21-4201.

Legal interest, 31-1-106.

Engaging in business of making loans restricted, 32-5-103.

Consumer loan businesses — charges, refunds, penalties, filing fees, 32-5-301.

31-1-402. Pawnbroker to keep register. (1) Every pawnbroker or junk dealer must keep a register, in which must be entered a description of every article pawned to him or purchased by him, with:

(a) the date of the pawning or purchasing;

(b) date when the article must be redeemed;

(c) the name of the person by whom the same was pawned or by whom purchased; and

(d) the amount loaned thereon or paid therefor.

(2) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register:

(a) the name of the purchaser;

(b) the time of the sale; and

(c) the price paid therefor.

(3) The register must always be open to inspection and examination of any peace officer or other persons.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3315, Pol. C. 1895; re-en. Sec. 2110, Rev. C. 1907; re-en. Sec. 4191, R.C.M. 1921; re-en. Sec. 4191, R.C.M. 1935; R.C.M. 1947, 66-1606.

Cross-References

Authority to require records for pawnshops, secondhand and junk shops, 7-21-4207.

Enforceability of security interest — proceeds, formal requisites, 30-9-203.

Unlawful transactions with children, 45-5-623.

31-1-403. When search warrant may issue. Whenever any person makes oath before a magistrate that any property belonging to him has been taken by theft or otherwise without his consent and that he has reason to believe or suspect and does suspect that such property has been pledged with any pawnbroker or junk dealer, such magistrate, if satisfied, must issue his warrant to search for the property so taken and, if found, to seize and bring the same before him.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3311, Pol. C. 1895; re-en. Sec. 2106, Rev. C. 1907; re-en. Sec. 4187, R.C.M. 1921; re-en. Sec. 4187, R.C.M. 1935; amd. Sec. 54, Ch. 359, L. 1977; R.C.M. 1947, 66-1602.

Cross-References

Searches and seizures, Art. II, sec. 11, Mont. Const.

Theft and related offenses, Title 45, ch. 6, part 3.

Searches and seizures — when authorized, 46-5-101.

Grounds for search warrant, 46-5-221.

31-1-404. Service of search warrant. The officer to whom said warrant is directed and delivered must execute the same and proceed in the same manner as in case of other search warrants.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3312, Pol. C. 1895; re-en. Sec. 2107, Rev. C. 1907; re-en. Sec. 4188, R.C.M. 1921; re-en. Sec. 4188, R.C.M. 1935; R.C.M. 1947, 66-1603.

Cross-References

Who may serve warrant, 46-5-226.

Service and execution of warrant, 46-5-227.

31-1-405. Delivery of property to claimant — bond. Upon any property seized by virtue of such warrant being brought before the magistrate who issued the same, he must cause such property to be delivered to the person so claiming to be the owner thereof, on whose application the warrant was issued, on his executing a bond as hereinafter directed; and if such bond be not executed within 48 hours, the magistrate must cause the property to be delivered to the person from whose possession it was taken.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3313, Pol. C. 1895; re-en. Sec. 2108, Rev. C. 1907; re-en. Sec. 4189, R.C.M. 1921; re-en. Sec. 4189, R.C.M. 1935; R.C.M. 1947, 66-1604.

Cross-References

Procedure in regard to property seized, Title 46, ch. 5, part 3.

31-1-406. Conditions of bond. The bond must be in a penal sum equal to double the value of the property claimed, with two sureties approved by the magistrate in favor of the person from whose possession the property was taken, with a condition that the claimant will, on demand, pay all damage that may be recovered against him in any suit to be brought within 20 days from the date of such bond by the pawnbroker or junk dealer from whose possession the property was taken.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3314, Pol. C. 1895; re-en. Sec. 2109, Rev. C. 1907; re-en. Sec. 4190, R.C.M. 1921; re-en. Sec. 4190, R.C.M. 1935; R.C.M. 1947, 66-1605.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

31-1-407. Violation a misdemeanor. A violation of any of the provisions of this part is a misdemeanor.

History: En. Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3316, Pol. C. 1895; re-en. Sec. 2111, Rev. C. 1907; re-en. Sec. 4192, R.C.M. 1921; re-en. Sec. 4192, R.C.M. 1935; amd. Sec. 21, Ch. 513, L. 1973; amd. Sec. 13, Ch. 185, L. 1977; R.C.M. 1947, 66-1607.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty when none specified, 46-18-212.

Part 5

Retail Sales — Late Payment Charges

31-1-501. Late payment charges — accounts receivable for merchandise sold at retail. (1) Notwithstanding 31-1-106 or 31-1-107, a person who sells goods, as defined in 31-1-202, at retail to a retail buyer who promises to pay for such goods upon presentation of the bill therefor, may charge and collect a late payment charge not greater than 1 ½% per month on all money due on all accounts from 30 days after the date on which the obligation of the buyer to pay is incurred.

(2) The late payment charge provided in this section may be charged only if at the time the obligation was incurred the seller did not intend to extend

any credit beyond 30 days and any late payment of the obligation was unintended.

(3) The provisions of this section do not apply to money due for intangible services, for services regulated by the public service commission, for real property, for health care services, or for retail installment sales contracts or retail charge account agreements regulated under Title 31, chapter 1, part 2.

History: En. Sec. 1, Ch. 222, L. 1981.

31-1-502. Periodic statement to be furnished to debtor. (1) A seller may charge the late payment charge provided for in 31-1-501 only if he promptly supplies the buyer with a statement as of the end of each monthly period, or other regular period agreed upon by the seller and the buyer, in which there is any unpaid balance. Such statement shall recite the following:

(a) the percentage amount of the late payment charge that will be charged beginning 30 days after the obligation is incurred;

(b) the unpaid balance at the beginning or end of the period;

(c) an identification of any amounts debited to the buyer's account during the period;

(d) the payments made by the buyer to the seller during the period;

(e) the amount of the late payment charge and also the percentage annual simple interest equivalent of such amount; and

(f) a legend to the effect that the buyer may at any time pay the total unpaid balance.

(2) The items need not be stated in the sequence or order set forth in subsection (1). Additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

History: En. Sec. 2, Ch. 222, L. 1981.

Part 6

State-Sponsored Credit Card

31-1-601. Definitions. As used in this part, the following definitions apply:

(1) "Financial institution" means a bank chartered under Title 32, chapter 1; a bank chartered under the National Bank Acts in Title 12 of the United States Code; a building and loan association chartered under Title 32, chapter 2; a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code; a credit union chartered under Title 32, chapter 3; or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code.

(2) "Financial institution credit card" means a credit card that entitles the holder to make open-account purchases up to an approved amount and is issued through the agency of a financial institution.

(3) "Sponsoring entity" means an entity that solicits the use of a particular financial institution credit card bearing the entity's name in exchange for a fee from the credit card issuer.

History: En. Sec. 1(4), Ch. 637, L. 1989.

31-1-602. State-sponsored credit card — distribution of proceeds. (1) The department of revenue is authorized to participate in a financial institution credit card program for the benefit of the state. Within 180 days of April 28, 1989, the department shall contact each financial institution to determine if:

(a) the financial institution or its holding company or affiliate currently administers a credit card program;

(b) the credit card program provides a fee or commission on retail sales to the sponsoring entity for the issuance and use of the credit card; and

(c) the credit card program would accept the state as a sponsoring entity.

(2) If the department determines that the state may be a sponsoring entity for a financial institution credit card, the department shall negotiate the most favorable rate for the state's fee by a credit card issuer. The state may not offer a more favorable rate to any credit card issuer. The rate must be expressed as a percentage of the gross sales from the use of the credit card. The proceeds of the fee must be deposited one-half in the general fund and one-half in the state special revenue fund for state equalization aid to public schools.

History: En. Sec. 1(1), (2), Ch. 637, L. 1989.

31-1-603. Rules. The department may adopt rules necessary to implement the credit card program.

History: En. Sec. 1(3), Ch. 637, L. 1989.

Cross References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 2

DEBTOR AND CREDITOR RELATIONSHIPS

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Chapter Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Compromise of debt without seal valid, 1-4-207.

State debt collecting service, Title 17, ch. 4, part 1.

Teachers' retirement compensation exempt from garnishment, 19-4-706.

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Proceedings against joint debtors, Title 25, ch. 15, part 1.

Availability of garnishment before and during action, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Judgment lien of Justice's Court, 25-31-914.

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Homestead exemption, Title 70, ch. 32, part 2.

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Debtor's misrepresentation of value of pledge, 71-2-110.

Effect of lien on rights of creditor, 71-3-110.

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Creditors' claims against estate, Title 72, ch. 3, part 8.

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When debt of testator not discharged by terms of will, 72-12-901.

Accountability of executor, 72-12-1003.

Part 1

General Provisions — Definitions

31-2-101. Debtor defined. A debtor is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

History: En. Sec. 4480, Civ. C. 1895; re-en. Sec. 6122, Rev. C. 1907; re-en. Sec. 8598, R.C.M. 1921; Cal. Civ. C. Sec. 3429; Field Civ. C. Sec. 1913; re-en. Sec. 8598, R.C.M. 1935; R.C.M. 1947, 18-101.

Cross-References

Proceedings in aid of execution against debtor, Title 25, ch. 14.

Liability of joint debtors, Title 25, ch. 15.

Right to contribution from joint debtors, 28-1-303.

Performance by one of several joint debtors, 28-1-1102.

Release of debtor by creditor, Title 28, ch. 1, part 16.

U.C.C. — debtor defined, 30-9-105.

Irrigation district — refusal of water to debtor, 85-7-1902.

31-2-102. Creditor defined. A creditor is one in whose favor an obligation exists, by reason of which he is or may become entitled to the payment of money.

History: En. Sec. 4481, Civ. C. 1895; re-en. Sec. 6123, Rev. C. 1907; re-en. Sec. 8599, R.C.M. 1921; Cal. Civ. C. Sec. 3430; Field Civ. C. Sec. 1914; re-en. Sec. 8599, R.C.M. 1935; R.C.M. 1947, 18-102.

Cross-References

Performance to one of several joint creditors, 28-1-1103.

Extinction when directions of creditor followed, 28-1-1104.

Release of debtor by creditor, Title 28, ch. 1, part 16.

U.C.C. — "creditor" defined, 30-1-201.

Human rights — "creditor" defined, 49-2-101.

31-2-103. Contracts of debtor are valid. In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

History: En. Sec. 4482, Civ. C. 1895; re-en. Sec. 6124, Rev. C. 1907; re-en. Sec. 8600, R.C.M. 1921; Cal. Civ. C. Sec. 3431; Field Civ. C. Sec. 1915; re-en. Sec. 8600, R.C.M. 1935; R.C.M. 1947, 18-103.

Cross-References

Who may contract, 28-2-201.

Kinds of fraud, 28-2-404 through 28-2-406.

Liens, Title 71, ch. 3.

31-2-104. Payments in preference. A debtor may pay one creditor in preference to another or may give to one creditor security for the payment of his demand in preference to another.

History: En. Sec. 4483, Civ. C. 1895; re-en. Sec. 6125, Rev. C. 1907; re-en. Sec. 8601, R.C.M. 1921; Cal. Civ. C. Sec. 3432; Field Civ. C. Sec. 1916; re-en. Sec. 8601, R.C.M. 1935; R.C.M. 1947, 18-104.

Cross-References

Performance to one of several joint creditors, 28-1-1103.

Extinction when directions of creditor followed, 28-1-1104.

U.C.C. — "security interest" defined, 30-1-201.

U.C.C. — priority of security interests, Title 30, ch. 9, part 3.

Preference given for wages, 31-2-205.

Preference to be absolute, 31-2-206.

Certain rights not affected by preferences in assignment, 31-2-207.

31-2-105. Relative rights of different creditors. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim and another person has an interest in or is entitled as a creditor to resort to some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons.

History: En. Sec. 4484, Civ. C. 1895; re-en. Sec. 6126, Rev. C. 1907; re-en. Sec. 8602, R.C.M. 1921; Cal. Civ. C. Sec. 3433; Field Civ. C. Sec. 1917; re-en. Sec. 8602, R.C.M. 1935; R.C.M. 1947, 18-105.

Cross-References

Performance to one of several joint creditors, 28-1-1103.

U.C.C. — rights of third parties — perfected and unperfected security interests — rules of priority, Title 30, ch. 9, part 3.

31-2-106. Exempt property — bankruptcy proceeding. No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, 35-10-502, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy which exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409).

History: En. Sec. 1, Ch. 161, L. 1981; amd. Sec. 1, Ch. 208, L. 1987; amd. Sec. 1, Ch. 45, L. 1989; amd. Sec. 1, Ch. 301, L. 1989; amd. Sec. 39, Ch. 586, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of (1), after "part 6", substituted "33-7-522" for "33-7-511". Amendment effective January 1, 1992.

Part 2

Assignments for Benefit of Creditors

Part Cross-References

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Transfer in trust for benefit of creditors to be recorded, 70-21-202.

31-2-201. When debtor may execute assignment. An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees in trust for the satisfaction of his creditors, in conformity to the provisions of this part, subject, however, to the provisions of this code relative to trusts and fraudulent transfers and to the restrictions imposed by law upon assignments by special partnerships, corporations, or other specific classes or persons.

History: En. Sec. 4510, Civ. C. 1895; re-en. Sec. 6136, Rev. C. 1907; re-en. Sec. 8612, R.C.M. 1921; Cal. Civ. C. Sec. 3449; Field Civ. C. Sec. 1924; re-en. Sec. 8612, R.C.M. 1935; R.C.M. 1947, 18-301.

Cross-References
Trust code, Title 72, ch. 33 through 36.

31-2-202. Insolvency — what constitutes. A debtor is insolvent, within the meaning of this part, when he is unable to pay his debts from his own means as they become due.

History: En. Sec. 4511, Civ. C. 1895; re-en. Sec. 6137, Rev. C. 1907; re-en. Sec. 8613, R.C.M. 1921; Cal. Civ. C. Sec. 3450; Field Civ. C. Sec. 1925; re-en. Sec. 8613, R.C.M. 1935; R.C.M. 1947, 18-302.

Cross-References
U.C.C. — "insolvent" defined, 30-1-201.

31-2-203. Certain transfers not affected. The provisions of this part do not prevent a person residing in another state or country from making there, in good faith and without intent to evade the laws of this state, a transfer of property situated within it; nor do they affect the power of a person, although insolvent and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

History: En. Sec. 4512, Civ. C. 1895; re-en. Sec. 6138, Rev. C. 1907; re-en. Sec. 8614, R.C.M. 1921; Cal. Civ. C. Sec. 3451; Field Civ. C. Sec. 1926; re-en. Sec. 8614, R.C.M. 1935; R.C.M. 1947, 18-303.

Cross-References
U.C.C. — multiple state secured transactions, 30-9-103.

31-2-204. What debts may be secured. An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

History: En. Sec. 4513, Civ. C. 1895; re-en. Sec. 6139, Rev. C. 1907; re-en. Sec. 8615, R.C.M. 1921; Cal. Civ. C. Sec. 3452; Field Civ. C. Sec. 1927; re-en. Sec. 8615, R.C.M. 1935; R.C.M. 1947, 18-304.

Cross-References
U.C.C. — secured transactions — policy and scope of chapter, 30-9-102.

U.C.C. — security interests arising under chapter on sales, 30-9-113.

31-2-205. Preference given for wages. In all assignments of property made by any person, association, partnership, chartered company, or corporation to trustees or assignees on account of inability of the assignor at the time of the assignment to pay his debts or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such assignor for services rendered within 4 months immediately previous to such assignment, not to exceed the actual amount owed for each person, are preferred claims and must be paid by such trustees or assignees before any other creditor of such assignor.

History: En. Sec. 2050, 5th Div. Comp. Stat. 1887; re-en. Sec. 4514, Civ. C. 1895; re-en. Sec. 6140, Rev. C. 1907; re-en. Sec. 8616, R.C.M. 1921; re-en. Sec. 8616, R.C.M. 1935; amd. Sec. 6, Ch. 109, L. 1943; R.C.M 1947, 18-305.

Cross-References
Payments in preference, 31-2-104.

Priority when assignment of property made, 71-3-301.

31-2-206. Preference to be absolute. A preference in an assignment for the benefit of creditors can only be given absolutely and without reserving any power of revocation.

History: En. Sec. 4515, Civ. C. 1895; re-en. Sec. 6141, Rev. C. 1907; re-en. Sec. 8617, R.C.M. 1921; Field Civ. C. Sec. 1929; re-en. Sec. 8617, R.C.M. 1935; R.C.M. 1947, 18-306.

Cross-References

Payments in preference, 31-2-104.

31-2-207. Certain rights not affected by preferences in assignment. No provision in an assignment giving a preference to a creditor can affect or impair any right of another creditor to priority of payment, whether created by law or arising from an obligation or transaction of the parties.

History: En. Sec. 4516, Civ. C. 1895; re-en. Sec. 6142, Rev. C. 1907; re-en. Sec. 8618, R.C.M. 1921; Field Civ. C. Sec. 1930; re-en. Sec. 8618, R.C.M. 1935; R.C.M. 1947, 18-307.

Cross-References

Payments in preference, 31-2-104.

Priority when assignment of property made, 71-3-301.

31-2-208. Joint and separate debts. Joint or joint and several debtors can prefer their joint creditors only out of joint property and can prefer the individual creditors of each only out of the separate property of each.

History: En. Sec. 4517, Civ. C. 1895; re-en. Sec. 6143, Rev. C. 1907; re-en. Sec. 8619, R.C.M. 1921; Field Civ. C. Sec. 1931; re-en. Sec. 8619, R.C.M. 1935; R.C.M. 1947, 18-308.

Cross-References

Liability of joint debtors, Title 25, ch. 15.

Joint obligations, Title 28, ch. 1, part 3.

31-2-209. Assignment — when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates 72-34-105.

History: En. Sec. 4518, Civ. C. 1895; re-en. Sec. 6144, Rev. C. 1907; re-en. Sec. 8620, R.C.M. 1921; Cal. Civ. C. Sec. 3457; Based on Field Civ. C. Sec. 1932; re-en. Sec. 8620, R.C.M. 1935; R.C.M. 1947, 18-309; amd. Sec. 217, Ch. 685, L. 1989.

Cross-References

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

31-2-210. The instrument of assignment. (1) An assignment for the benefit of creditors must be in writing and subscribed by the assignor or by his agent thereto authorized by writing.

(2) It must be acknowledged or proved and certified in the mode prescribed by the law on recording transfers of real property and recorded as required by 31-2-215 and 31-2-216, but recording in one county constitutes a compliance with the last-mentioned sections.

(3) The assignment must be accompanied by the affidavit of the assignor and assignee that such assignment is made in good faith, for the benefit of the creditors of the assignor, and without any design to hinder, delay, or defraud such creditors.

(4) The assent of the assignee, subscribed and acknowledged by him, must appear in writing embraced in or at the end of or endorsed upon the assignment before the same is recorded and, if separate from the assignment, must be duly acknowledged.

History: En. Sec. 4519, Civ. C. 1895; re-en. Sec. 6145, Rev. C. 1907; re-en. Sec. 8621, R.C.M. 1921; Cal. Civ. C. Sec. 3458; Based on Field Civ. C. Sec. 1933; re-en. Sec. 8621, R.C.M. 1935; R.C.M. 1947, 18-310.

Cross-References

Acknowledgments, Title 1, ch. 5, part 2.

Real property acknowledgment of transfer, 3-1-404.

Certificate of acknowledgment of transfer, 3-1-405.

What contracts must be in writing, 28-2-903.

What acts agent may perform, 28-10-105.

Agency — when written authorization necessary, 28-10-203.

U.C.C. — "good faith" defined, 30-1-201, 30-2-103.

31-2-211. Compliance necessary to validity of assignment. Unless the provisions of 31-2-210 are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

History: En. Sec. 4520, Civ. C. 1895; re-en. Sec. 6146, Rev. C. 1907; re-en. Sec. 8622, R.C.M. 1921; Cal. Civ. C. Sec. 3459; Field Civ. C. Sec. 1934; re-en. Sec. 8622, R.C.M. 1935; R.C.M. 1947, 18-311.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Contracts — what conditions void, 28-2-707.

31-2-212. Assignee takes subject to rights of third parties. An assignee for the benefit of creditors is not to be regarded as a purchaser for value and has no greater rights than his assignor has in respect to things in action transferred by the assignment.

History: En. Sec. 4521, Civ. C. 1895; re-en. Sec. 6147, Rev. C. 1907; re-en. Sec. 8623, R.C.M. 1921; Cal. Civ. C. Sec. 3460; Field Civ. C. Sec. 1935; re-en. Sec. 8623, R.C.M. 1935; R.C.M. 1947, 18-312.

Cross-References

What defenses to action survive assignment of right to action, 27-1-503.

Priorities among conflicting security interests in the same collateral, 30-9-312.

Defenses against assignee, 30-9-318.

31-2-213. Inventory required. Within 20 days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by 31-2-215, a full and true inventory showing:

(1) all the creditors of the assignor;

(2) the place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated;

(3) the sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;

(4) the true consideration of the liability in each case and the place where it arose;

(5) every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;

(6) all property of the assignor at the date of the assignment which is exempt by law from execution; and

(7) all of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt; the encumbrances existing thereon; all vouchers and securities relating thereto; and the value of such property, according to the best knowledge of the assignor.

History: En. Sec. 4522, Civ. C. 1895; re-en. Sec. 6148, Rev. C. 1907; re-en. Sec. 8624, R.C.M. 1921; Cal. Civ. C. Sec. 3461; Field Civ. C. Sec. 1936; re-en. Sec. 8624, R.C.M. 1935; R.C.M. 1947, 18-313.

Cross-References

Rules for determining residence, 1-1-215.

Property exempt from execution, Title 25, ch. 13, part 6.

Proceedings to determine availability of property for execution, Title 25, ch. 14, part 1.

Contracts — consideration, Title 28, ch. 2, part 8.

U.C.C. — validity of security agreement and rights of parties thereto, Title 30, ch. 9, part 2.

Homestead exemption, Title 70, ch. 32, part 2.

31-2-214. Verification of inventory — when assignee required to file — inspection of assignor's books and papers. (1) An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in 31-2-213, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

(2) (a) In case such assignor shall omit, neglect, or refuse to make and deliver such inventory within the 20 days required, the assignee named in such assignment shall, within 30 days after the date thereof, cause to be made and delivered to the judge of the district court of the county where such assignment is recorded such inventory as above required, insofar as he can.

(b) For such purpose, said judge shall, at any time upon the application of such assignee, compel by order such delinquent assignor and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess necessary to the proper making of such inventory.

(c) The assignee shall verify the inventory so made by him to the effect that the same is in all respects just and true to the best of his knowledge and belief.

(3) In case the assignee shall be unable to make and file such inventory within 30 days, the district judge may, upon application upon oath showing such inability, allow him such further time as shall be necessary, not exceeding 60 days.

(4) If the assignee fails to make and file such inventory within said 30 days or such further time as may be allowed, the district judge shall require, by order, the assignee forthwith to appear before him and show cause why he

should not be removed. Any person interested in the trust estate may apply for such order and demand such removal.

(5) The books and papers of such delinquent assignor shall at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is a contempt, and obedience to such order may be enforced by attachment.

(6) The inventory shall be filed by said district judge in the office of the clerk of said county in which said assignment is recorded.

History: En. Sec. 4523, Civ. C. 1895; re-en. Sec. 6149, Rev. C. 1907; re-en. Sec. 8625, R.C.M. 1921; Cal. Civ. C. Sec. 3462; re-en. Sec. 8625, R.C.M. 1935; R.C.M. 1947, 18-314.

Cross-References

Role and duties of county clerk, 7-4-2611.

Production and inspection of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure to proceedings on assignment, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Affidavits, Title 26, ch. 1, part 10.

31-2-215. Recording assignment and filing inventory. An assignment for the benefit of creditors must be recorded and the inventory required by 31-2-213 filed with the county clerk of the county in which the assignor resided at the date of the assignment or, if he did not then reside in this state, with the clerk of the county in which his principal place of business was then situated or, if he had not then a residence or place of business in this state, with the clerk of the county in which the principal part of the assigned property was then situated.

History: En. Sec. 4524, Civ. C. 1895; re-en. Sec. 6150, Rev. C. 1907; re-en. Sec. 8626, R.C.M. 1921; Cal. Civ. C. Sec. 3463; Based on Field Civ. C. Sec. 1938; re-en. Sec. 8626, R.C.M. 1935; R.C.M. 1947, 18-315.

Cross-References

Rules for determining residence, 1-1-215.

Role and duties of county clerk, 7-4-2611.

31-2-216. Recording and filing when more than one assignor. If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded and a copy of the inventory required by 31-2-213 must be filed with the county clerk of the county in which any of the assignors resided at its date or in which any of them not then residing in this state then had a place of business.

History: En. Sec. 4525, Civ. C. 1895; re-en. Sec. 6151, Rev. C. 1907; re-en. Sec. 8627, R.C.M. 1921; Cal. Civ. C. Sec. 3464; Based on Field Civ. C. Sec. 1939; re-en. Sec. 8627, R.C.M. 1935; R.C.M. 1947, 18-316.

Cross-References

Rules for determining residence, 1-1-215.

Role and duties of county clerk, 7-4-2611.

31-2-217. Effect of failing to record. An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers and encumbrances in good faith and for value unless it is recorded within 20 days after the date of the assignment.

History: En. Sec. 4526, Civ. C. 1895; re-en. Sec. 6152, Rev. C. 1907; re-en. Sec. 8628, R.C.M. 1921; Cal. Civ. C. Sec. 3465; Based on Field Civ. C. Sec. 1940; re-en. Sec. 8628, R.C.M. 1935; R.C.M. 1947, 18-317.

31-2-218. Assignment of real property. When an assignment for the benefit of creditors embraces real property, it is subject to the provisions of this part, 70-21-102, and Title 70, chapter 21, part 3.

History: En. Sec. 4527, Civ. C. 1895; re-en. Sec. 6153, Rev. C. 1907; re-en. Sec. 8629, R.C.M. 1921; Cal. Civ. C. Sec. 3466; Field Civ. C. Sec. 1941; re-en. Sec. 8629, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1977; R.C.M. 1947, 18-318; amd. Sec. 4, Ch. 88, L. 1979.

31-2-219. Bond of assignees. Within 30 days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the state, for the use and benefit of the creditors, in such amount as may be fixed by a judge of the district court of the county in which the original inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

History: En. Sec. 4528, Civ. C. 1895; re-en. Sec. 6154, Rev. C. 1907; re-en. Sec. 8630, R.C.M. 1921; Cal. Civ. C. Sec. 3467; Based on Field Civ. C. Sec. 1942; re-en. Sec. 8630, R.C.M. 1935; R.C.M. 1947, 18-319.

Cross-References

Role and duties of county clerk, 7-4-2611.

Suretyship, Title 28, ch. 11, part 4.

Surety insurance, Title 33, ch. 26, part 1.

31-2-220. Management, disposal, and conversion of estate. (1) Until the inventory and affidavit required by 31-2-213 and 31-2-214 have been made and filed and the assignee has given bond as required by 31-2-219, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

(2) But in case the assignor shall fail to present such inventory within the 20 days required, then the assignee, before the 10 days shall have elapsed, may apply to said district judge by verified petition for leave to file a provisional bond until such time as he may be able to present the inventory as herein provided.

(3) The district judge shall, in the case provided in 31-2-214, and may also at any time on the petition of one or more creditors showing misconduct or incompetency of the assignee or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than 5 days to the assignor, assignee, surety, and such other persons as such judge may prescribe:

(a) remove or discharge the assignee and appoint one or more in his place;

(b) order an accounting of the assignee so removed or discharged.

(4) The district judge may:

(a) enjoin said assignee from interfering with the assignor's estate and make provision by order for the safe custody of the same; and

(b) enforce obedience to such injunction and orders by attachment.

(5) Upon his discharge, upon his own application, such assignee's bond shall be canceled and discharged.

(6) The new assignee shall give a bond, to be approved as required.

(7) The district judge shall have power by order to:

(a) require or allow any inventory or schedule filed to be corrected or amended;

(b) require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe; and

(c) enforce obedience to such orders by attachment.

History: En. Sec. 4529, Civ. C. 1895; re-en. Sec. 6155, Rev. C. 1907; amd. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8631, R.C.M. 1921; Cal. Civ. C. Sec. 3468; re-en. Sec. 8631, R.C.M. 1935; R.C.M. 1947, 18-320.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Suretyship, Title 28, ch. 11, part 4.

31-2-221. Notice to creditors to present claims. (1) The judge may, upon the petition of the assignee, authorize him to advertise for creditors to present to him their claims, with the vouchers therefor, duly verified, on or before a day to be specified in such advertisement, not less than 10 days from the publication thereof, which advertisement or notice shall be published in one newspaper, to be designated by the judge as most likely to give notice to the persons to be served, at least once and such additional times as the judge may direct. The last publication shall be at least 1 week prior to the date specified.

(2) Said verified claims of creditors shall set forth whether any and, if so, what securities are held for such claims and whether any and, if so, what payments have been made thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8632, R.C.M. 1921; re-en. Sec. 8632, R.C.M. 1935; R.C.M. 1947, 18-321.

Cross-References

Legal notice by publication, Title 18, ch. 7, part 2.

31-2-222. Notices to parties interested in the estate as creditors or otherwise. (1) Parties interested in the estate as creditors or parties otherwise interested, if the judge so directs, shall have at least 10 days' notice by mail to their respective addresses as they appear in the schedule filed by the assignor, or at such other addresses as they shall have filed with the assignee, of:

(a) all proposed sales of property, in bulk;

(b) the filing of the final account of the assignee and of the hearing thereon;

(c) any proposed compromise with creditors.

(2) Such notice may be given as the judge shall direct and must be returnable in court, or before the judge of the court at chambers, in the district.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8633, R.C.M. 1921; re-en. Sec. 8633, R.C.M. 1935; R.C.M. 1947, 18-322.

Cross-References

U.C.C. — bulk transfers, Title 30, ch. 6.

31-2-223. Duties of assignee. It shall be the duty of the assignee to:

(1) collect and reduce to money the property of the estate and close up the estate as expeditiously as possible;

(2) sell the property of the estate as soon as practicable and sell the accounts and bills receivable when deemed advisable;

(3) furnish such information concerning the estate as may be requested by parties in interest;

(4) keep regular accounts and pay dividends as often as is compatible with the best interests of the estate;

(5) file a final report and account at least 10 days before the hearing thereon.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8634, R.C.M. 1921; re-en. Sec. 8634, R.C.M. 1935; R.C.M. 1947, 18-323.

31-2-224. Power of court. The court shall have power to:

(1) authorize the business of the assignor to be conducted for a limited period by assignee, if necessary in the best interests of the estate, and allow additional compensation for such services;

(2) reopen estates when it appears they were closed before being fully administered and for that purpose to appoint another assignee who will take title to the property not administered;

(3) direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend, notwithstanding their claim has not been presented in accordance with the notice sent out by the assignee, provided that 4 months have not elapsed since the first publication of notice to creditors;

(4) approve the final report and discharge the assignee and his surety from all further liabilities upon matters included in the accounting to creditors appearing and to creditors not having appeared after due citation or not having presented their claims after due advertisement.

History: En. Sec. 1, Ch. 180, L. 1919; amd. Sec. 1, Ch. 215, L. 1921; re-en. Sec. 8635, R.C.M. 1921; re-en. Sec. 8635, R.C.M. 1935; R.C.M. 1947, 18-324; amd. Sec. 5, Ch. 88, L. 1979.

31-2-225. When further security required. The district judge may, upon his own motion or upon the application of any party in interest and on such notice as he may direct to be given to the assignor, assignee, and surety, require further security to be given whenever, in his judgment, the security afforded by the bond on file is not adequate.

History: En. Sec. 4530, Civ. C. 1895; re-en. Sec. 6156, Rev. C. 1907; re-en. Sec. 8636, R.C.M. 1921; re-en. Sec. 8636, R.C.M. 1935; R.C.M. 1947, 18-325.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

31-2-226. Accounting of assignee. After 6 months from the date of an assignment for the benefit of creditors, the assignee may be required, on petition of any creditor, to make an accounting before the district court of the county where the accompanying inventory was filed.

History: En. Sec. 4531, Civ. C. 1895; re-en. Sec. 6157, Rev. C. 1907; re-en. Sec. 8637, R.C.M. 1921; Cal. Civ. C. Sec. 3469; Based on Field Civ. C. Sec. 1944; re-en. Sec. 8637, R.C.M. 1935; R.C.M. 1947, 18-326; amd. Sec. 6, Ch. 88, L. 1979.

31-2-227. Property exempt. Property exempt from execution and insurance upon the life of the assignor do not pass to the assignee by a general assignment for the benefit of creditors unless the instrument specially mentions them and declares an intention that they should pass thereby.

History: **En. Sec. 4532, Civ. C. 1895; re-en. Sec. 6158, Rev. C. 1907; re-en. Sec. 8638, R.C.M. 1921; Cal. Civ. C. Sec. 3470; Field Civ. C. Sec. 1945; re-en. Sec. 8638, R.C.M. 1935; R.C.M. 1947, 18-327.**

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Life insurance, Title 33, ch. 20.

Homestead exemption, Title 70, ch. 32, part 2.

31-2-228. Compensation. In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians, but the assignment cannot grant more and may restrict the commissions to a lesser amount or deny them altogether.

History: **En. Sec. 4533, Civ. C. 1895; re-en. Sec. 6159, Rev. C. 1907; re-en. Sec. 8639, R.C.M. 1921; Cal. Civ. C. Sec. 3471; Field Civ. C. Sec. 1946; re-en. Sec. 8639, R.C.M. 1935; R.C.M. 1947, 18-328.**

Cross-References

Compensation of personal representative, 72-3-631.

Compensation of guardians, 72-5-432.

31-2-229. Assignees protected for acts done in good faith. An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void.

History: **En. Sec. 4534, Civ. C. 1895; re-en. Sec. 6160, Rev. C. 1907; re-en. Sec. 8640, R.C.M. 1921; Cal. Civ. C. Sec. 3472; Field Civ. C. Sec. 1947; re-en. Sec. 8640, R.C.M. 1935; R.C.M. 1947, 18-329.**

Cross-References

U.C.C. — "good faith" defined, 30-1-201, 30-2-103.

U.C.C. — obligation of good faith, 30-1-203.

31-2-230. Assent of creditors necessary to modification of assignment. An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the assignee cannot afterwards be canceled or modified by the parties thereto without the consent of every creditor affected thereby.

History: **En. Sec. 4535, Civ. C. 1895; re-en. Sec. 6161, Rev. C. 1907; re-en. Sec. 8641, R.C.M. 1921; Cal. Civ. C. Sec. 3473; Field Civ. C. Sec. 1948; re-en. Sec. 8641, R.C.M. 1935; R.C.M. 1947, 18-330.**

Part 3

Uniform Fraudulent Transfer Act

Part Cross-References

Claim and delivery of personal property, Title 27, ch. 17.

Defrauding creditors, 45-6-315.

Real property — fraudulent conveyances, Title 70, ch. 20, part 4.

31-2-301. Repealed. Sec. 14, Ch. 324, L. 1991.

History: **En. Sec. 1, Ch. 126, L. 1945; R.C.M. 1947, 29-101.**

31-2-302. Repealed. Sec. 14, Ch. 324, L. 1991.

History: En. Sec. 2, Ch. 126, L. 1945; R.C.M. 1947, 29-102.

31-2-303. Repealed. Sec. 14, Ch. 324, L. 1991.

History: En. Sec. 3, Ch. 126, L. 1945; R.C.M. 1947, 29-103.

31-2-304 through 31-2-310 reserved.

31-2-311 through 31-2-317. Repealed. Sec. 14, Ch. 324, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

31-2-311. En. Sec. 4, Ch. 126, L. 1945; R.C.M. 1947, 29-104.

31-2-312. En. Sec. 5, Ch. 126, L. 1945; R.C.M. 1947, 29-105.

31-2-313. En. Sec. 6, Ch. 126, L. 1945; R.C.M. 1947, 29-106.

31-2-314. En. Sec. 7, Ch. 126, L. 1945; R.C.M. 1947, 29-107.

31-2-315. En. Sec. 4491, Civ. C. 1895; re-en. Sec. 6128, Rev. C. 1907; re-en. Sec. 8604, R.C.M. 1921; Cal. Civ. C. Sec. 3440; Field Civ. C. Sec. 1919; re-en. Sec. 8604, R.C.M. 1935; amd. Sec. 5, Ch. 185, L. 1977; R.C.M. 1947, 29-208.

31-2-316. En. Sec. 4493, Civ. C. 1895; re-en. Sec. 6130, Rev. C. 1907; re-en. Sec. 8606, R.C.M. 1921; Cal. Civ. C. Sec. 3442; Field Civ. C. Sec. 1923; re-en. Sec. 8606, R.C.M. 1935; R.C.M. 1947, 29-210.

31-2-317. En. Sec. 8, Ch. 126, L. 1945; R.C.M. 1947, 29-108.

31-2-318 through 31-2-320 reserved.

31-2-321 through 31-2-325. Repealed. Sec. 14, Ch. 324, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

31-2-321. En. Sec. 9, Ch. 126, L. 1945; R.C.M. 1947, 29-109.

31-2-322. En. Sec. 10, Ch. 126, L. 1945; R.C.M. 1947, 29-110.

31-2-323. En. Sec. 4492, Civ. C. 1895; re-en. Sec. 6129, Rev. C. 1907; re-en. Sec. 8605, R.C.M. 1921; Cal. Civ. C. Sec. 3441; Field Civ. C. Sec. 1922; re-en. Sec. 8605, R.C.M. 1935; R.C.M. 1947, 29-209.

31-2-324. En. Sec. 11, Ch. 126, L. 1945; R.C.M. 1947, 29-111.

31-2-325. En. Sec. 12, Ch. 126, L. 1945; R.C.M. 1947, 29-112.

31-2-326. Short title. This part may be cited as the "Uniform Fraudulent Transfer Act".

History: En. Sec. 1, Ch. 324, L. 1991.

31-2-327. Uniformity of application and construction. This part must be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 12, Ch. 324, L. 1991.

31-2-328. Definitions. As used in this part, the following definitions apply:

(1) "Affiliate" means:

(a) a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt if the person has not exercised the power to vote;

(b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt if the person has not exercised the power to vote;

(c) a person whose business is operated by the debtor under a lease or other agreement or a person substantially all of whose assets are controlled by the debtor; or

(d) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(a) property to the extent it is encumbered by a valid lien;

(b) property to the extent it is generally exempt under nonbankruptcy law; or

(c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(a) if the debtor is an individual:

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in subsection (7)(a)(ii); or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(b) if the debtor is a corporation:

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in subsection (7)(b)(iv); or

(vi) a relative of a general partner, director, officer, or person in control of the debtor;

(c) if the debtor is a partnership:

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in subsection (7)(c)(iii); or

(v) a person in control of the debtor;

(d) an affiliate or an insider of an affiliate as if the affiliate were the debtor; and

(e) a managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means:

(a) an individual related by consanguinity within the third degree as determined by the common law;

(b) a spouse or an individual related to a spouse within the third degree as so determined; or

(c) an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

History: En. Sec. 2, Ch. 324, L. 1991.

31-2-329. Insolvency. (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's property at a fair valuation and the debtor is generally not paying his debts as they become due.

(2) Property under this section does not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this part.

History: En. Sec. 3, Ch. 324, L. 1991.

31-2-330. Value. (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

History: En. Sec. 4, Ch. 324, L. 1991.

31-2-331 and 31-2-332 reserved.

31-2-333. Transfers fraudulent as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; or

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

History: En. Sec. 5, Ch. 324, L. 1991.

31-2-334. Transfers fraudulent as to present creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

History: En. Sec. 6, Ch. 324, L. 1991.

31-2-335. When transfer made or obligation incurred. For the purposes of this part:

(1) a transfer is made:

(a) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this part that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not perfected before the commencement of an action for relief under this part, the transfer is considered made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is considered made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred;

(5) an obligation is incurred:

(a) if oral, when it becomes effective between the parties; or

(b) if evidenced in writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

History: En. Sec. 7, Ch. 324, L. 1991.

31-2-336 through 31-2-338 reserved.

31-2-339. Remedies of creditors. (1) In an action for relief against a transfer or obligation under this part, a creditor, subject to the limitations in 31-2-340, may obtain:

(a) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Title 27, chapter 18; or

(c) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

History: En. Sec. 8, Ch. 324, L. 1991.

31-2-340. Defenses, liability, and protection of transferee. (1) A transfer or obligation is not voidable under 31-2-333(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under 31-2-339(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this part, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under 31-2-333(1)(b) or 31-2-334 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 30, chapter 9.

(6) A transfer is not voidable under 31-2-334(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

History: En. Sec. 9, Ch. 324, L. 1991.

31-2-341. Extinguishment of cause of action. A cause of action with respect to a fraudulent transfer or obligation under this part is extinguished unless action is brought under:

(1) 31-2-333(1)(a) within 2 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) 31-2-333(1)(b) or 31-2-334(1) within 2 years after the transfer was made or the obligation was incurred; or

(3) 31-2-334(2) within 1 year after the transfer was made or the obligation was incurred.

History: En. Sec. 10, Ch. 324, L. 1991.

31-2-342. Supplementary provisions. Unless displaced by the provisions of this part, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

History: En. Sec. 11, Ch. 324, L. 1991.

CHAPTER 3

RELATED CREDIT PRACTICES

Part 1 — Consumer Reporting Agencies

31-3-101. Purpose.
31-3-102. Definitions and rules of construction.
31-3-103. Credit rating — property right.
31-3-104 through 31-3-110 reserved.
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31-3-112. Obsolete information.
31-3-113. Disclosure of investigative consumer reports.
31-3-114. Compliance procedures.
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31-3-116 through 31-3-120 reserved.
31-3-121. Disclosures to governmental agencies.
31-3-122. Disclosures to consumers.
31-3-123. Conditions of disclosure to consumer.
31-3-124. Procedure in case of disputed accuracy.
31-3-125. Fees for disclosures to consumers.
31-3-126. Public record information for employment purposes.
31-3-127. Repealed.
31-3-128 through 31-3-130 reserved.
31-3-131. Requirements on users of consumer reports.
31-3-132 through 31-3-140 reserved.
31-3-141. Actions available to consumer.
31-3-142. Civil liability for willful noncompliance.
31-3-143. Civil liability for negligent noncompliance.
31-3-144 through 31-3-150 reserved.
31-3-151. Jurisdiction — venue.
31-3-152. Rules.
31-3-153. Violation.

Part 2 — Debt Adjusting

31-3-201. Definitions.
31-3-202. Debt adjusting prohibited — penalty.
31-3-203. Exemptions.

Part 1

Consumer Reporting Agencies

Part Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

31-3-101. Purpose. It is the purpose of this part to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this part. A further purpose of this part is to guard an individual's right to privacy guaranteed in Article II, section 10, of the Montana constitution.

History: En. 18-501 by Sec. 1, Ch. 547, L. 1975; R.C.M. 1947, 18-501.

31-3-102. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this part.

(2) The term "consumer" means an individual.

(3) (a) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) other purposes authorized under 31-3-111.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit, directly or indirectly, by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit, directly or indirectly, to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under 31-3-131.

(4) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(5) The term "employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(6) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(7) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(8) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(9) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

History: En. 18-502 by Sec. 2, Ch. 547, L. 1975; R.C.M. 1947, 18-502.

31-3-103. Credit rating — property right. A credit rating is a property right with full constitutional protection.

History: En. 18-503 by Sec. 3, Ch. 547, L. 1975; R.C.M. 1947, 18-503.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

31-3-104 through 31-3-110 reserved.

31-3-111. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) in response to the order of a court having jurisdiction to issue such an order;

(2) in accordance with the written instructions of the consumer to whom it relates;

(3) to a person which it has reason to believe:

(a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

(b) intends to use the information for employment purposes;

(c) intends to use the information in connection with the underwriting of insurance involving the consumer;

(d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

History: En. 18-504 by Sec. 4, Ch. 547, L. 1975; R.C.M. 1947, 18-504.

Cross-References

Consumer protection — unlawful practices, 30-14-103.

Retail installment sales, Title 31, ch. 1, part 2.

Consumer loan businesses, Title 32, ch. 5.

Insurance, Title 33.

The employment relationship, Title 39, ch. 2.

31-3-112. Obsolete information. No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than 14 years;

(2) suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than 7 years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

(5) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years;

(6) any other adverse item of information which antedates the report by more than 7 years.

History: En. 18-505 by Sec. 5, Ch. 547, L. 1975; R.C.M. 1947, 18-505.

Cross-References

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Tax liens and limitations, Title 15, ch. 16, part 4.

31-3-113. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made and such disclosure is made in a writing mailed or otherwise delivered to the consumer not later than 3 days after the date on which the report was first requested and includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (2) of this section; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (1)(a), make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure shall be made in a writing mailed or otherwise delivered to the consumer not later than 5 days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

(3) No person may be held liable for any violation of subsection (1) or (2) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (1) or (2).

History: En. 18-506 by Sec. 6, Ch. 547, L. 1975; R.C.M. 1947, 18-506.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

The employment relationship, Title 39, ch. 2.

31-3-114. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of 31-3-112 and 31-3-113 and to limit the furnishing of consumer reports to the purposes listed under 31-3-111. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in 31-3-111.

(2) Whenever a consumer reporting agency prepares a consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that he is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer.

History: En. 18-507 by Sec. 7, Ch. 547, L. 1975; R.C.M. 1947, 18-507.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Consumer Protection Act, Title 30, ch. 14, part 1.

31-3-115. Adverse information. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report.

History: En. 18-508 by Sec. 8, Ch. 547, L. 1975; R.C.M. 1947, 18-508.

31-3-116 through 31-3-120 reserved.

31-3-121. Disclosures to governmental agencies. Notwithstanding the provisions of 31-3-111, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

History: En. 18-509 by Sec. 9, Ch. 547, L. 1975; R.C.M. 1947, 18-509.

31-3-122. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to July 1, 1975, do not apply to existing consumer reporting agencies except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

History: En. 18-510 by Sec. 10, Ch. 547, L. 1975; amd. Sec. 3, Ch. 185, L. 1977; R.C.M. 1947, 18-510.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Consumer Protection Act, Title 30, ch. 14, part 1.

31-3-123. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under 31-3-122 during normal business hours and on reasonable notice.

(2) The disclosures required under 31-3-122 shall be made to the consumer:

(a) in person if he appears in person and furnishes proper identification; or

(b) by telephone if he has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to 31-3-122.

(4) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

History: En. 18-511 by Sec. 11, Ch. 547, L. 1975; R.C.M. 1947, 18-511.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

31-3-124. Procedure in case of disputed accuracy. (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.

(2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(3) Whenever a statement of a dispute is filed, unless there are reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

History: En. 18-512 by Sec. 12, Ch. 547, L. 1975; R.C.M. 1947, 18-512.

31-3-125. Fees for disclosures to consumers. A consumer reporting agency shall make all disclosures pursuant to 31-3-122 and 31-3-124 to the consumer, with appropriate fees to be established by the department of commerce in accordance with the Montana Administrative Procedure Act.

History: En. 18-513 by Sec. 13, Ch. 547, L. 1975; R.C.M. 1947, 18-513; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

31-3-126. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up-to-date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up-to-date if the current public record status of the item at the time of the report is reported.

History: En. 18-514 by Sec. 14, Ch. 547, L. 1975; R.C.M. 1947, 18-514.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records management, Title 2, ch. 6, part 2.

31-3-127. Repealed. Sec. 10, Ch. 418, L. 1989.

History: En. Sec. 1, Ch. 543, L. 1985.

31-3-128 through 31-3-130 reserved.

31-3-131. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after the consumer learned of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (1) and (2).

History: En. 18-515 by Sec. 15, Ch. 547, L. 1975; amd. Sec. 4, Ch. 185, L. 1977; R.C.M. 1947, 18-515.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Consumer protection — unlawful practices, 30-14-103.

31-3-132 through 31-3-140 reserved.

31-3-141. Actions available to consumer. (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this part.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant is liable to suit.

(3) A person, other than the department of social and rehabilitation services under 40-5-261, who furnishes information to a consumer reporting agency that is false or a person who furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

(4) A consumer who disputes the result of a reinvestigation conducted under 31-3-124 of the accuracy of information provided by the department of social and rehabilitation services may petition for an administrative hearing pursuant to 40-5-261.

History: En. 18-516 by Sec. 16, Ch. 547, L. 1975; R.C.M. 1947, 18-516; amd. Sec. 1, Ch. 418, L. 1989; amd. Sec. 35, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: In (3) and (4) changed references to Department of Revenue to references to Department of Social and Rehabilitation Services; and made minor changes in style.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Liability for negligence as well as willful acts, 27-1-701.

Defamation — how effected, 27-1-801.

31-3-142. Civil liability for willful noncompliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amounts of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-517 by Sec. 17, Ch. 547, L. 1975; R.C.M. 1947, 18-517.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Damages, Title 27, ch. 1, part 2.

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

31-3-143. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this part with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

History: En. 18-518 by Sec. 18, Ch. 547, L. 1975; R.C.M. 1947, 18-518.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Liability for negligence as well as willful acts, 27-1-701.

31-3-144 through 31-3-150 reserved.

31-3-151. Jurisdiction — venue. A consumer may bring suit in any district court in Montana, except that disputes concerning information provided under 40-5-261 are subject to administrative and judicial review as provided in 40-5-261.

History: **En. 18-519 by Sec. 19, Ch. 547, L. 1975; R.C.M. 1947, 18-519; amd. Sec. 2, Ch. 418, L. 1989.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Venue, Title 25, ch. 2.

31-3-152. Rules. The department of commerce shall enforce this part and promulgate rules necessary to carry out the intent of this part.

History: **En. 18-520 by Sec. 20, Ch. 547, L. 1975; R.C.M. 1947, 18-520; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 2, Ch. 543, L. 1985; amd. Sec. 3, Ch. 418, L. 1989.**

Cross References

Adoption and publication of rules, Title 2, ch. 4, part 3.

31-3-153. Violation. For the purposes of this part, a violation of this law would be in violation of Title 30, chapter 14, part 1.

History: **En. 18-521 by Sec. 21, Ch. 547, L. 1975; R.C.M. 1947, 18-521.**

Cross-References

Damages, 30-14-133.

Penalties, 30-14-142.

Part 2

Debt Adjusting

31-3-201. Definitions. As used in this part, the following words and terms shall have the following meanings unless the context clearly requires a different meaning:

(1) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management, or debt-pooling service or the holding of oneself out by words of similar import as providing services to debtors in the management of their debts and contracting with the debtor for a fee to:

(a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor; or

(b) receive from the debtor and disperse to his creditors any money or other thing of value.

(2) "Person" means an individual, corporation, partnership, trust, firm, association, or other legal entity.

History: **En. Sec. 1, Ch. 300, L. 1969; R.C.M. 1947, 18-401.**

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

Consideration, Title 28, ch. 2, part 8.

Wage brokers, Title 31, ch. 1, part 3.

31-3-202. Debt adjusting prohibited — penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or be imprisoned not more than 6 months, or both.

History: En. Sec. 2, Ch. 300, L. 1969; R.C.M. 1947, 18-402.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

31-3-203. Exemptions. Section 31-3-202 does not apply to:

(1) those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) banks and fiduciaries duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) title insurers and abstract companies, while doing an escrow business;

(4) judicial officers or others acting under court orders;

(5) nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) those situations involving debt adjusting incurred incidentally in connection with the lawful practice of a certified public accountant;

(7) bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) employers for their employees;

(9) any person (other than a collection agency):

(a) who provides a bond in the amount of $10,000 to the department of commerce under which the person is the obligor and the bond is conditioned that the obligor shall apply all funds received and discharge all obligations for which the obligor has contracted; and

(b) whose maximum fees do not exceed:

(i) a processing and documentation fee of $75; and

(ii) for debt adjusting as defined in 31-3-201, 15% of the total amounts that are owed by the debtor and that are reduced in equal monthly portions over the life of a contract;

(10) any person who, at the request of a debtor, arranges for or makes a loan to the debtor and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts.

History: En. Sec. 3, Ch. 300, L. 1969; amd. Sec. 2, Ch. 185, L. 1977; R.C.M. 1947, 18-403; amd. Sec. 1, Ch. 295, L. 1989.

TITLE 32

FINANCIAL INSTITUTIONS

Ch.
1. Banks and Trust Companies.
2. Building and Loan Associations.
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CHAPTER 1

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Requirements of bank acting as depository for counties, cities, or towns, 7-6-201 through 7-6-208.

Special proceedings involving banks that are not subject to the Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20); 32-1-516; 32-1-532; 32-1-538.

Actions against banks — limitations, 27-2-213.

Insurance premium finance companies, Title 33, ch. 14.

Bank or trust company as trustee for mausoleum-columbarium endowment fund, 35-21-610.

Part 1

General Provisions — Definitions

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

32-1-101. Short title — application. Parts 1 to 5, inclusive, of this chapter shall be known as the "Bank Act" and shall be applicable to all corporations and persons specified in 32-1-102 and to such other corporations as shall subject themselves to special provisions and sections thereof and to such other persons, partnerships, or corporations who shall by violating any of its provisions become subject to the penalties provided therein.

History: **En. Sec. 1, Ch. 89, L. 1927; re-en. Sec. 6014.1, R.C.M. 1935; R.C.M. 1947, 5-101.**

Cross-References

Penalty for transacting business without certificate, 32-1-403.

Building and loan associations, Title 32, ch. 2.

Credit unions, Title 32, ch. 3.

32-1-102. Institutions to which chapter is applicable. (1) The word "bank" as used in this chapter means any corporation which has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt, provided that nothing herein applies to or includes money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for such purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

History: **En. Sec. 2, Ch. 89, L. 1927; re-en. Sec. 6014.2, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1977; R.C.M. 1947, 5-102.**

Cross-References

Agency, Title 28, ch. 10.

U.C.C. — "bank" defined, 30-1-201.

Definition of regulated lender, 31-1-111.

Consolidation or merger of banks, 32-1-371.

Penalty for transacting business without certificate, 32-1-403.

Dissolution, closing, and liquidation — "bank" defined, 32-1-561.

32-1-103. Foreign corporations. Any corporation organized under the laws of any country or state other than this state, which has complied with all of the laws of this state pertaining to foreign corporations and is not engaged in the business of banking or receiving money on deposit in this state, may lend money in this state and, for that purpose, may maintain offices in this state and sue and be sued in this state under its proper corporate name, notwithstanding any prohibitions contained in this chapter as to the use of any words in the name, sign, or advertising matter of corporations not under the supervision of the department.

History: **En. Sec. 31, Ch. 89, L. 1927; re-en. Sec. 6014.35, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-510.**

Cross-References

Action against business association, 25-5-104.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Geographical restrictions on certain satellite terminals, 32-6-204.

Foreign business corporations, Title 35, ch. 1, part 10.

Rural cooperative utilities — foreign corporations, 35-18-107.

32-1-104. Number of persons necessary to form corporation. Corporations may be formed by any number of natural persons not less than three under the laws of this state to conduct, as provided in this chapter and not otherwise, any one or more or all of the businesses mentioned in 32-1-102.

History: En. Sec. 3, Ch. 89, L. 1927; re-en. Sec. 6014.3, R.C.M. 1935; R.C.M. 1947, 5-103.

32-1-105. Commercial bank defined. The term "commercial bank" means any bank authorized by law to:

(1) receive deposits of money;

(2) deal in commercial paper or make loans thereon;

(3) lend money on real or personal property;

(4) sell credit life and disability insurance on loans to its borrowers;

(5) discount bills, notes, or other commercial papers; and

(6) buy and sell securities, gold and silver bullion, foreign coins, or bills of exchange.

History: En. Subd. a, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.4, R.C.M. 1935; R.C.M. 1947, 5-104; amd. Sec. 1, Ch. 129, L. 1981.

Cross-References

U.C.C. — "bank" defined, 30-1-201.

U.C.C. — commercial paper, Title 30, ch. 3.

Consolidation or merger of banks, 32-1-371.

Disability insurance, 33-1-207.

Life insurance, 33-1-208.

32-1-106. Savings bank defined. The term "savings bank" means a bank organized only for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors and which may:

(1) loan and invest the funds thereof;

(2) receive deposits of money; loan, invest, and collect the same with interest; and repay depositors with or without interest;

(3) sell credit life and disability insurance on loans to its borrowers;

(4) invest said funds and moneys in such property, securities, and obligations as may be prescribed by this chapter; and

(5) declare and pay:

(a) dividends on its general deposits; and

(b) a stipulated rate of interest on deposits made for a stated period or upon special terms.

History: En. Subd. b, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.5, R.C.M. 1935; R.C.M. 1947, 5-105; amd. Sec. 2, Ch. 129, L. 1981.

Cross-References

U.C.C. — "bank" defined, 30-1-201.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consolidation or merger of banks, 32-1-371.

Investment of capital of savings banks, 32-1-421.

Disability insurance, 33-1-207.

Life insurance, 33-1-208.

32-1-107. Trust company defined — purposes for which may be formed. The term "trust company" means any corporation that is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive money in trust and to accumulate the money at rates of interest as may be obtained or agreed upon or to allow interest on the money as may be agreed upon;

(2) to accept and execute all trusts and perform the duties committed to them by any person or by any corporations or may be committed or transferred to them by order of any of the courts of record of this state or any other state or of the United States;

(3) to take and accept by grant, assignment, transfer, devise, or bequest and hold any real or personal estate or trust created in accordance with the laws of this state or any other state or of the United States and execute the legal trusts in regard to the same on the terms as may be declared, established, or agreed upon in regard to the estate or trust;

(4) to act as agent for the investment of money for other persons or corporations and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon;

(5) to accept from and execute trusts for married persons in respect to their individual property, whether real or personal, and act as agents for them in the management of the property and generally to have and exercise powers as are usually had and exercised by trust companies;

(6) to act as trustee, assignee, or receiver in all cases where it is lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver and to be appointed a trustee, assignee, or receiver and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors or of the estate of any person of unsound mind, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates;

(7) to loan money upon unencumbered real estate, collateral, or personal security and execute and issue notes and debentures payable at a future date and to pledge its mortgages upon real estate and other securities as security for the notes and debentures;

(8) to buy and sell:

(a) government, state, county, municipal, and other bonds. The trust company may invest in United States obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(b) all kinds of negotiable, nonnegotiable, and commercial paper, stocks, and other investment securities; and

(c) gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange;

(9) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors; to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, securities, and other valuable and personal property; to collect coupons, interest, and dividends on securities described in this section; and to rent out the use of safes and other receptacles on their premises upon terms and for compensation as may be agreed upon.

History: En. Subd. c, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.6, R.C.M. 1935; amd. Sec. 18, Ch. 293, L. 1975; R.C.M. 1947, 5-106; amd. Sec. 2, Ch. 137, L. 1989.

Cross-References

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — investment securities, Title 30, ch. 8.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consolidation or merger of banks, 32-1-371.

Subsidiary trust companies, Title 32, ch. 1, part 8.

Business corporations, Title 35, ch. 1.

Trust code, Title 72, ch. 33 through 36.

32-1-108. Investment company defined — purposes for which may be formed. The term "investment company" means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon or to allow such interest as may be agreed upon and to issue and sell its contracts or certificates of indebtedness, directly or through an agent or broker, bearing fixed rates of interest, in whole or in part, with participation or nonparticipation in the profits of the corporation and maturing at fixed periods of time, or otherwise, as may be fully set forth in said contracts or certificates;

(2) to buy and sell government, state, county, municipal, and other bonds and all kinds of negotiable and nonnegotiable and commercial paper, stocks, and other investment securities;

(3) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with depositors, and to collect coupons, interest, and dividends on securities described in (2).

History: En. Subd. d, Sec. 4, Ch. 89, L. 1927; re-en. Sec. 6014.7, R.C.M. 1935; R.C.M. 1947, 5-107.

Cross-References

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — investment securities, Title 30, ch. 8.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Consolidation or merger of banks, 32-1-371.

Business corporations, Title 35, ch. 1.

32-1-109. Definitions. Unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state banking board provided for in 2-15-1803.

(2) "Branch bank" means a banking house, other than the main banking house, maintained and operated by a bank doing business in the state but does not include a detached facility, as provided for in 32-1-372, or a satellite terminal, as defined in 32-6-103.

(3) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(4) "City" means a city, town, or municipality, incorporated or unincorporated, that is an aggregation of inhabitants and structures sufficient to constitute a distinct place.

(5) "City limits" means, in the case of:

(a) an incorporated city, the corporate limits as provided for in 7-2-4101; or

(b) an unincorporated place, the boundaries that under the circumstances define the city as a distinct place.

(6) "Common ownership" means the ownership, directly or indirectly, of 80% or more of the voting stock of each of two or more banks by an individual, group of individuals, entity, or corporation.

(7) "Community advisory board" means a group of citizens to advise the management of a branch bank, a majority of whom must be residents of the county in which the branch bank is located.

(8) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(9) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(10) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(11) "Main banking house" means the principal place of business of a bank in the state.

(12) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

(13) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(14) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits which, when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(15) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

(16) "Undivided profits" means the credit balance of the profit and loss account of a bank.

History: En. Sec. 5, Ch. 89, L. 1927; re-en. Sec. 6014.9, R.C.M. 1935; amd. Sec. 1, Ch. 431, L. 1975; R.C.M. 1947, 5-109; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 483, L. 1983; amd. Sec. 2, Ch. 75, L. 1985; amd. Sec. 1, Ch. 322, L. 1989.

Cross-References
Demand or time deposits, 32-1-445.

32-1-110. Punishment. When no other punishment is provided, a person willfully or knowingly violating parts 1 through 5 of this chapter is guilty of a misdemeanor. Upon information furnished by the department, the attorney general shall sue to enforce parts 1 through 5 of this chapter.

History: En. Sec. 143, Ch. 89, L. 1927; re-en. Sec. 6014.153, R.C.M. 1935; amd. Sec. 61, Ch. 431, L. 1975; R.C.M. 1947, 5-1123.

Cross-References
Attorney General — general duties, 2-15-501.
Penalty for transacting business without certificate, 32-1-403.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — when no penalty specified, 46-18-212.

32-1-111. Attachments prohibited. No property owned by any bank organized under the laws of the state of Montana shall be subject to attachment.

History: En. Sec. 96, Ch. 89, L. 1927; re-en. Sec. 6014.107, R.C.M. 1935; R.C.M. 1947, 5-1023.

Cross-References
Prejudgment attachment, Title 27, ch. 18.

Part 2

Functions of State Banking Board and Department of Commerce

Part Cross-References
State Banking Board, 2-15-1803.

32-1-201. State banking board — secretary — meetings — per diem. (1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold meetings at the office of the department at dates and times set by the department. Special meetings may be called by the chairman at any time upon 3 days' notice to the members.

(4) A quorum for all meetings shall be a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) The chairman shall have a voice but no vote in all meetings except to break a tie.

(6) Any board member except the chairman may be removed by the governor without cause in any case.

(7) The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of commerce. The costs and expenses of the board shall be legitimate charges of the department.

History: En. Sec. 3, Ch. 420, L. 1973; amd. Sec. 11, Ch. 71, L. 1977; amd. Sec. 2, Ch. 453, L. 1977; R.C.M. 1947, 5-609; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 6, Ch. 474, L. 1981; amd. Sec. 1, Ch. 9, L. 1987.

Cross-References

Powers and duties of Governor, 2-15-201.

32-1-202. Powers and duties of board. The state banking board shall:

(1) make final determinations upon applications for certificates of authorization for new banks, branch banks, mergers, consolidations, and relocations of banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of the department of commerce as the duties and powers relate to banking.

History: En. Sec. 4, Ch. 420, L. 1973; amd. Sec. 22, Ch. 431, L. 1975; amd. Sec. 12, Ch. 71, L. 1977; R.C.M. 1947, 5-610; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 2, Ch. 322, L. 1989.

Cross-References

Board to refuse or approve application, 32-1-303.

Change of place of business and number of directors authorized, 32-1-353.

Consolidation or merger of banks, 32-1-371.

32-1-203. Rules adopted by board — new banks. The board shall adopt rules necessary for the administration of 32-1-201 through 32-1-206, 32-1-371, and 32-1-372 in accordance with the Montana Administrative Procedure Act. In particular, the board shall adopt rules concerning the authorization of new banks organized under the laws of this state, establishment of new branches of banks organized under the laws of this state, and approval of the consolidation or merger of banks organized under the laws of this state. Rules shall contain minimum standards under which an application for a new bank or for establishment of a branch bank shall be determined, including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank or branch bank at the proposed location;

(2) that the bank or branch bank will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated;

(3) a persuasive showing that the new bank or branch bank will have a sufficient volume of business to assure solvency and that establishment of the new bank organized under the laws of this state or the establishment of a branch bank organized under the laws of this state will be in the public interest.

History: En. Sec. 5, Ch. 420, L. 1973; amd. Sec. 23, Ch. 431, L. 1975; amd. Sec. 13, Ch. 71, L. 1977; R.C.M. 1947, 5-611; amd. Sec. 3, Ch. 322, L. 1989.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Incorporation, 32-1-302.

Board to refuse or approve application, 32-1-303.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-1-204. Hearings — notice. (1) A hearing shall be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank certificate of authorization shall be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than 30 days and not later than 90 days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations, or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters.

(6) Notwithstanding the requirements of subsections (1) through (5), when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the board is empowered to issue a certificate of authorization without notice or hearing, according to rules adopted by the board.

History: En. Sec. 6, Ch. 420, L. 1973; amd. Sec. 24, Ch. 431, L. 1975; R.C.M. 1947, 5-612; amd. Sec. 1, Ch. 567, L. 1987.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Incorporation, 32-1-302.

Board to refuse or approve application, 32-1-303.

Change of place of business and number of directors authorized, 32-1-353.

Consolidation or merger of banks, 32-1-371.

32-1-205. Board rules for discovery and hearing procedures. (1) The board shall, under rules adopted by it, permit prehearing discovery procedures, including the taking of depositions and the production of documents. The rules of civil procedure for state courts shall furnish guidelines for such rules.

(2) In adopting rules for hearings, the board shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives, to apply both to discovery procedures and to hearings, and the board shall have authority to provide for issuance of subpoenas and administration of oaths.

History: En. Sec. 7, Ch. 420, L. 1973; R.C.M. 1947, 5-613; amd. Sec. 139, Ch. 575, L. 1981.

Cross-References

Officers who may administer oaths, 1-6-101.

Code of Ethics, Title 2, ch. 2, part 1.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

32-1-206. Disqualification of board member — when. Any board member shall disqualify himself from acting upon any matter in which he or any bank or financial institution in which he has a direct or indirect interest is involved, competitively or otherwise.

History: En. Sec. 8, Ch. 420, L. 1973; R.C.M. 1947, 5-614.

Cross-References

Sale of securities by officer to bank, 32-1-463.

Overdraft by officer or employee — receiving personal profit from loan, 32-1-465.

Purchase of obligation of bank by officer, 32-1-466.

Loans to managing officer or director, 32-1-467.

32-1-207 through 32-1-210 reserved.

32-1-211. Examination and supervision by department. (1) The department shall exercise constant supervision over the books and affairs of all banks doing business in this state.

(2) It shall:

(a) examine, at least once every 30 months, each of those banks and verify the assets and liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books; and

(b) submit in writing to the examined bank a report of the examination's findings no later than 120 days after the completion of the examination.

(3) It shall further investigate the methods of operation and conduct of business of the banks and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.

(4) It may examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank regarding the affairs and business of the bank.

(5) It may, in the performance of its official duties, issue subpoenas and administer oaths. In case of a refusal to obey a subpoena issued by it, the refusal may at once be reported to the district court of the district in which the bank is located, and the court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(6) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(7) All officers, directors, agents, and employees of banks doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank shall at all times afford reasonable facilities for the examinations and make returns and reports to the department as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce and exhibit any books, accounts, documents,

and property it desires to inspect, and in all things aid it in the performance of its duty.

History: En. Sec. 71, Ch. 89, L. 1927; re-en. Sec. 6014.75, R.C.M. 1935; amd. Sec. 30, Ch. 431, L. 1975; R.C.M. 1947, 5-901; amd. Sec. 2, Ch. 9, L. 1987; amd. Sec. 1, Ch. 199, L. 1989.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Consumer protection — department authority, 30-14-114.

Unfair trade practices — investigations, 30-14-221.

Penalty for transacting business without certificate, 32-1-403.

Examination by the corporation — when accepted, 32-1-605.

Building and loan associations — Department of Commerce responsibility, Title 32, ch. 2, part 3.

Credit unions — examinations, 32-3-203.

Access to records — witnesses, 32-5-404.

32-1-212. Director and employees not to be interested in banks. Neither the director of the department of commerce nor any bank examiner may be interested in or a borrower from any state bank, directly or indirectly.

History: En. Sec. 58, Ch. 89, L. 1927; re-en. Sec. 6014.62, R.C.M. 1935; amd. Sec. 20, Ch. 431, L. 1975; amd. Sec. 10, Ch. 71, L. 1977; R.C.M. 1947, 5-604; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Public employees — Code of Ethics, Title 2, ch. 2, part 1.

32-1-213. Payments to be made by banks, investment companies, and trust companies. (1) On or before January 31 and July 31 of each year, each bank, trust company, or investment company under the supervision of the department shall pay to the department a semiannual assessment fee. The fees shall be set to recover all of the costs of administering the program for the supervision of banks, trust companies, and investment companies. The department shall establish such assessment fee by rule on or before June 1 of each year. The funds so collected shall be deposited in the state special revenue fund for the use of the department in its examination function.

(2) In addition to the above assessment, trust companies shall pay to the department an examination fee of $200 per day for each examiner involved in examining the trust assets under the control, safekeeping, or fiduciary responsibility of the trust company. Such fees shall be deposited by the department in the state special revenue fund for the use of the department in its examination function.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; re-en. Sec. 6014.82, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959; amd. Sec. 1, Ch. 256, L. 1971; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-908; amd. Sec. 1, Ch. 289, L. 1979; amd. Sec. 1, Ch. 507, L. 1983; amd. Sec. 1, Ch. 600, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State finance — fund structure, 17-2-102.

32-1-214. Special examination defined. A special examination is an examination made by the department otherwise than in the ordinary routine of the department because, in its opinion, the condition of the bank requires the examination or an examination made at the request of the board of directors or stockholders of a bank.

History: En. Sec. 92, Ch. 89, L. 1927; re-en. Sec. 6014.103, R.C.M. 1935; amd. Sec. 35, Ch. 431, L. 1975; amd. Sec. 18, Ch. 71, L. 1977; R.C.M. 1947, 5-1019.

Cross-References

Examinations by the corporation — when accepted, 32-1-605.

Building and loan associations — examinations by department, 32-2-301.

Credit unions — examinations, 32-3-203.

32-1-215. Special examinations and fees — report within 120 days. Special examinations may be made of a bank, trust company, investment company, building and loan association, or credit union when in the judgment of the department it is considered necessary, and the special examination shall be charged for at a rate that equals the department's actual costs for examiner wages and travel expenses. All special examination fees or charges shall be paid at the conclusion of the examination, and the moneys collected by the department shall be paid to the state treasurer for the credit of the state special revenue fund for the use of the department in its examination function. The department shall submit in writing to the examined bank a report of the examination's findings no later than 120 days after the completion of the examination.

History: En. Sec. 2, Ch. 167, L. 1929; re-en. Sec. 6014.84, R.C.M. 1935; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963; amd. Sec. 22, Ch. 249, L. 1967; amd. Sec. 5, Ch. 256, L. 1971; amd. Sec. 31, Ch. 431, L. 1975; R.C.M. 1947, 5-910; amd. Sec. 2, Ch. 600, L. 1985; amd. Sec. 2, Ch. 199, L. 1989.

Cross-References

Building and loan associations — examinations by department, 32-2-301.

Credit unions — examinations, 32-3-203.

32-1-216. Examination at request of directors. When requested in writing, upon the authority of a majority of the board of directors of any bank, to make an examination of such bank, the department shall do so.

History: En. Sec. 93, Ch. 89, L. 1927; re-en. Sec. 6014.104, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1020.

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-1-217. Department to examine trusts. It shall be the duty of the department as a part of the examination of trust companies and banks to check all trusts, trust funds, and trust and estate accounts held in the possession and control of the bank or trust company.

History: En. Sec. 98, Ch. 89, L. 1927; re-en. Sec. 6014.109, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1025.

Cross-References

Trusts in general, Title 72, ch. 33, part 1.

32-1-218. Department to make rules. (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of banks and prescribe the form in which banks shall report their assets, liabilities, and reserves.

History: (1)En. Sec. 100, Ch. 89, L. 1927; re-en. Sec. 6014.111, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 20, Ch. 71, L. 1977; Sec. 5-1027, R.C.M. 1947; (2)En. Sec. 91, Ch. 89, L. 1927; re-en. Sec. 6014.102, R.C.M. 1935; amd. Sec. 34, Ch. 431, L. 1975; Sec. 5-1018, R.C.M. 1947; R.C.M. 1947, 5-1018, 5-1027.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-1-219 through 32-1-230 reserved.

32-1-231. Reports to department of commerce. (1) The department shall call for the reports specified in this section at least three times each year.

(2) A bank shall make to the department regular call reports according to the form which may be prescribed by the department, verified by oath or affirmation of the president, vice-president, or cashier of the bank and attested by the signature of at least two of the directors other than the subscribing officer.

(3) Each report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified by the department. The "past day specified" by the department, under the provisions of this section, shall be on the day designated by the comptroller of currency of the United States for reports of national banking associations.

(4) The report shall be transmitted to the department within 30 days after the receipt of a request or requisition for it and in a form the department may require. It shall be published as soon as possible at the expense of the bank in a newspaper published in the place where the bank is established or, if there be no newspaper in the place, then in one published nearest to that place in the same county. Proof of the publication shall be furnished at the times and in the manner as may be required by the department.

History: En. Secs. 61, 64, Ch. 89, L. 1927; re-en. Secs. 6014.65, 6014.68, R.C.M. 1935; amd. Secs. 25, 170, Ch. 431, L. 1975; R.C.M. 1947, 5-701, 5-704; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 186, L. 1985.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Building and loan associations — reports and accounts prescribed by department, 32-2-302.

Building and loan associations — reports of condition — contents — publication, 32-2-303.

Credit unions — reports, 32-3-202.

32-1-232. Report of declaration of dividend. In addition to the report required by 32-1-231, a bank shall report to the department within 10 days after declaring any dividend, showing the amount of the dividend and the amount of net earnings in excess of the dividend. The report shall be attested as provided in 32-1-231.

History: **En. Sec. 62, Ch. 89, L. 1927; re-en. Sec. 6014.66, R.C.M. 1935; amd. Sec. 26, Ch. 431, L. 1975; amd. Sec. 14, Ch. 71, L. 1977; R.C.M. 1947, 5-702.**

Cross-References

Dividends, surplus, losses, and bad debts, 32-1-452.

32-1-233. Special reports to department. In addition to the information obtained from the report required by 32-1-231, the department may also require a bank to furnish a special report in writing, verified as required by 32-1-231, when in its judgment the special report is necessary to inform it fully of the actual financial condition and affairs of the bank. A willfully false statement in the report is perjury and shall be punished accordingly.

History: **En. Sec. 63, Ch. 89, L. 1927; re-en. Sec. 6014.67, R.C.M. 1935; amd. Sec. 27, Ch. 431, L. 1975; R.C.M. 1947, 5-703.**

Cross-References

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Perjury, 45-7-201.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

32-1-234. Confidentiality — penalties. (1) The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, shall be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information contained in them shall be used by the department only in the furtherance of its official duties. The department may exchange information with federal banking departments and with departments of other states and furnish information to the legislative auditor or prosecuting officials who request it for use in pursuit of official duties.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in this subsection, be imparted to any person not officially associated with the department. The information shall be used by the department only in the furtherance of its official duties, except that the department may exchange information with the federal banking department and departments of other states and may furnish information to prosecuting officials who require it for use in pursuit of official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a bank shall be removed from office and is also guilty of a felony. Upon conviction he shall be fined not exceeding $1,000 or imprisoned in the state penitentiary not exceeding 5 years or both fined and imprisoned.

History: **En. Secs. 65, 85, Ch. 89, L. 1927; re-en. Secs. 6014.69, 6014.96, R.C.M. 1935; amd. Secs. 28, 33, Ch. 431, L. 1975; R.C.M. 1947, 5-705, 5-1012.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 1.

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

32-1-235. Penalty for failure to make report within thirty days. If any bank neglects to make out or transmit the statements required by this chapter within 30 days after call, it shall be subject to a penalty of $20 for each day in default after the period respectively required by this chapter that it may delay to make and transmit any such statements. Should any bank delay for a period of 1 month to make out and transmit the statements and proofs of publication required by this chapter beyond the period when the same is required to be made or willfully violate any of the provisions of this chapter with reference to said statements and reports, the directors shall be personally responsible for all the debts of such corporation contracted previous to and during the period of such neglect.

History: En. Sec. 66, Ch. 89, L. 1927; re-en. Sec. 6014.70, R.C.M. 1935; R.C.M. 1947, 5-706; amd. Sec. 2, Ch. 186, L. 1985.

32-1-236. False statements and entries considered felony. Every officer or other person authorized by this chapter who willfully and knowingly makes any false statement of facts, statement of account, or report and every officer, agent, or clerk of any bank who willfully and knowingly makes any false entries in the books of such bank or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine such bank and every person authorized by the provisions of this chapter to make statements or reports who willfully and knowingly subscribes or makes any false statement or report is guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for a term of not less than 1 or more than 10 years or be fined an amount not to exceed $50,000, or both.

History: En. Sec. 67, Ch. 89, L. 1927; re-en. Sec. 6014.71, R.C.M. 1935; amd. Sec. 15, Ch. 71, L. 1977; R.C.M. 1947, 5-707; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Selection of officers and employees — meetings and minutes, 32-1-325.

Fraud by director, officer, or employee, 32-1-464.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Felony charges — suspension or prohibition, 32-1-908.

Corporations — penalty imposed upon officers and directors for signing false document, 35-1-428.

Part 3

Formation and Reorganization

Part Cross-References

Banks subject to corporation license tax, 15-31-101.

U.C.C. — investment securities, Title 30, ch. 8.

32-1-301. Organization and incorporation — articles of agreement. (1) Any three or more persons desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this chapter shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement which shall set forth:

(a) the corporate name of the proposed corporation, which may not be the name of any other corporation granted and then doing business of a similar character in this state or any imitation of a name, provided that it is lawful to use the name used by any corporation previously incorporated and doing business in the state of Montana but which has been disincorporated, liquidated, dissolved, and is entirely out of business. A banking corporation may not adopt or use the name of any other banking corporation or association, or of any friendly association.

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) the amount of the capital stock of the corporation, the number of shares into which it is to be divided, and the par value of shares; the amount of capital stock actually subscribed in good faith at the time of the signing of the articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody of some banking institution designated as the depository of the money until the proposed corporation is fully organized and authorized to engage in business;

(d) the names and places of residence of the several shareholders and the number of shares subscribed by each;

(e) the number of the board of directors and the names of those agreed upon for the first year. The articles may provide that the number of directors elected at each annual meeting shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders.

(f) the purpose for which the association or company is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:

(a) for breach of a director's duty of loyalty to a corporation or its shareholders;

(b) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law; or

(c) for a transaction from which a director derives an improper personal benefit.

History: **Ap. p. Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1965; Sec. 5-201, R.C.M. 1947; Ap. p. Sec. 2661, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; Sec. 93-100-2, R.C.M. 1947; R.C.M. 1947, 5-201, 93-100-2(part); amd. Sec. 1, Ch. 179, L. 1985; amd. Sec. 1, Ch. 278, L. 1989.**

Cross-References

Taking acknowledgments and affidavits, 3-1-404.

Certificate of authenticity of Justice's Court's certificate of acknowledgment, 3-1-405.

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Number of persons necessary to form corporation, 32-1-104.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Penalty for transacting business without certificate, 32-1-403.

Organization of subsidiary trust companies, 32-1-803.

Business corporations, Title 35, ch. 1.

Shareholder agreements, 35-9-301.

32-1-302. Incorporation. (1) The proposed articles of agreement shall be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact within this state the business specified in the articles of agreement.

(2) Upon the presentation of the proposed articles of agreement, together with the application, the department shall ascertain whether the requisite capital of the bank, as required in 32-1-307, has been subscribed and been paid up in cash. It shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this chapter. It shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "commercial", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.

(3) The expenses of the department and the board incurred in the examinations and hearings provided for in this chapter for the formation of new banks must be paid by the proposed bank through advance payment of a reasonable nonrefundable application fee which must be determined by the board by rule.

(4) All information gathered by the department under this section shall be transmitted to the board for its use in conducting hearings on applications for certificates of authorization.

History: En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 2, Ch. 431, L. 1975; R.C.M. 1947, 5-202; amd. Sec. 1, Ch. 79, L. 1979.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Powers and duties of State Banking Board, 32-1-202.

When advertising as bank prohibited — trade names restricted, 32-1-402.

Business corporations — formation — articles of incorporation — bylaws, Title 35, ch. 1, part 2.

32-1-303. Board to refuse or approve application. The board may refuse or approve an application for a certificate of authorization in accordance with 32-1-202 through 32-1-206.

History: En. 5-202.1 by Sec. 3, Ch. 431, L. 1975; amd. Sec. 2, Ch. 71, L. 1977; R.C.M. 1947, 5-202.1.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

32-1-304. Repealed. Sec. 2, Ch. 79, L. 1979.

History: **En. Sec. 7, Ch. 89, L. 1927; re-en. Sec. 6014.11, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-205.**

32-1-305. Filing of certificate and articles of agreement. The articles of agreement, together with one of the certificates of authorization issued by the department, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank. A certified copy of the articles of agreement, together with the certificate of authorization, shall be filed with the secretary of state. Upon filing with the secretary of state the articles of agreement and the certificate of authorization and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that the corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage. This certificate shall be taken by all courts of this state as evidence of the corporate existence of the bank. The persons signing and acknowledging the articles of agreement and their associates and successors are then a body corporate with power of continual succession and by that name they and their successors are entitled to have, possess, and enjoy all the rights and privileges conferred by this chapter.

History: **En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; amd. Sec. 4, Ch. 431, L. 1975; R.C.M. 1947, 5-203.**

Cross-References

Evidence — public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

32-1-306. Continual succession of banks. Any bank, trust company, or investment company now existing may at any time, within the period limited for its duration, elect to avail itself of the right of continual succession herein given by filing its intention to do so in the office of the county clerk and recorder of the county wherein such corporation is located and a copy thereof with the secretary of state and by paying the legal filing fees therefor. No such corporation shall be allowed to increase its capital stock by such filing without complying with the provisions of this chapter and paying the legal filing fees as in such cases otherwise provided.

History: **En. as part of Sec. 6, Ch. 89, L. 1927; re-en. Sec. 6014.10, R.C.M. 1935; R.C.M. 1947, 5-204.**

32-1-307. Amount of capital. (1) The amount of the common and preferred stock of a commercial bank shall not be less than $25,000, and in addition thereto there shall be created a surplus of not less than 10% of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the department for the certificate of authorization hereinabove mentioned.

(2) A commercial bank having its place of business in a city or town of more than 2,000 and less than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $30,000 and a surplus of 10% of the capital stock as hereinbefore provided. A commercial bank having its place of business in a city or town of more than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital

stock of not less than $50,000 and a surplus of 10% of the capital stock as hereinbefore provided.

(3) The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement and shall be not less than $100,000 or more than $10 million, of which amount at least $100,000 must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the department for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of $100 or such less amount as may be provided in the articles of incorporation, provided that this chapter shall not require any bank in existence and doing business to increase its capital stock.

History: En. Sec. 8, Ch. 89, L. 1927; amd. Sec. 1, Ch. 81, L. 1935; re-en. Sec. 6014.12, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-206.

Cross-References

Business corporations — shares, Title 35, ch. 1, part 6.

32-1-308. Bylaws. (1) The persons signing the articles of agreement shall at their first meeting adopt bylaws for the government of the corporation, which bylaws may provide for:

(a) the time, place, and manner of calling and conducting the meetings of the corporation;

(b) the number of stockholders constituting a quorum;

(c) the mode of voting by proxy;

(d) the time of the annual election of directors and the mode and manner of giving notice thereof;

(e) the duties of officers;

(f) the manner of election and the tenure of office of all officers other than the directors;

(g) suitable penalties for violation of bylaws, not exceeding in any case $100 for any one offense.

(2) The bylaws adopted must be certified by a majority of the directors and the secretary of the corporation and recorded in the book of bylaws, which book shall be open to the inspection of the public during the office hours of each day except holidays. A copy of the bylaws shall also be transmitted to the department. The bylaws may be repealed or amended or new bylaws be adopted at the annual meetings or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or the power to repeal and amend the bylaws and adopt new bylaws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors.

History: En. Sec. 13, Ch. 89, L. 1927; re-en. Sec. 6014.17, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-211.

Cross-References

Bylaws regarding banking hours and business days, 32-1-484.

32-1-309 through 32-1-320 reserved.

32-1-321. Calling of first meeting — cancellation of certificate. When the formation of the corporation is completed under the provisions of this chapter by the issuance of the certificate of incorporation by the secretary of state, any three such incorporators signing the articles of agreement may call the first meeting of the corporation at such time and place as they may appoint by giving notice thereof by publication in some newspaper of general circulation in the county in which the principal office for the transaction of business is to be located at least 5 days before the time appointed for such meeting. If all the subscribers to the capital stock unite in a call for such meeting, in writing, no notice is necessary. If the first meeting be not called within 30 days from the date of the certificate of incorporation or if such corporation shall fail to commence the business for which it is incorporated within 90 days from the date of the issuance of the certificate of authorization, the department is authorized to cancel such certificate of authorization.

History: En. Sec. 9, Ch. 89, L. 1927; re-en. Sec. 6014.13, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-207.

Cross-References

Powers and duties of State Banking Board, 32-1-202.

32-1-322. Board of directors — qualifications, tenure, and vacancies. (1) The affairs of the bank shall be managed by a board of directors, not less than three in number, of whom at least two-thirds must be residents of Montana. Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors shall be elected for a term of 1 year at the annual meeting of the stockholders, which shall be held on any business day before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January or until others are elected and qualified. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office and that he will not knowingly violate or permit a violation of any of the provisions of this chapter. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office and one copy shall be kept on file in the office of the bank.

(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board and the directors so appointed shall hold office until the next annual election.

History: En. Sec. 10, Ch. 89, L. 1927; re-en. Sec. 6014.14, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1957; amd. Sec. 5, Ch. 431, L. 1975; R.C.M. 1947, 5-208; amd. Sec. 1, Ch. 84, L.

1979; amd. Sec. 1, Ch. 341, L. 1981; amd. Sec. 1, Ch. 561, L. 1983; amd. Sec. 2, Ch. 179, L. 1985; amd. Sec. 1, Ch. 24, L. 1989.

Cross-References

Officers who may administer oaths, 1-6-101.

Persons previously convicted under banking laws — bank employment, 32-1-462.

Building and loan associations — directors and officers, 32-2-206.

Business corporations — directors and officers, Title 35, ch. 1, part 4.

32-1-323. Elections — how conducted. (1) All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name for as many persons as there are directors to be elected or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal or to distribute them on the same principle among as many candidates as he shall think fit.

(2) The board of directors may prescribe the form and manner of executing proxies. The shares of stock of an estate of a minor or of a person of unsound mind may be represented and voted by his guardian and of a deceased person by his executor or administrator, and every person who shall pledge his stock may nevertheless represent and vote the same at all meetings unless the pledgor appoints the pledgee as a proxy in accordance with the bylaws of the company.

(3) The board of directors may provide for the closing of the stock books of the company for such length of time prior to the annual election as may be by it deemed convenient for the making up of the lists of the stockholders. Any regular or called meeting of the stockholders may adjourn from day to day or from time to time if for any reason there is not a quorum present or no election is had, such adjournment and the reasons therefor being recorded in the minutes of said meeting.

(4) All elections and other actions at meetings of stockholders or directors shall be conducted in accordance with the laws of the state of Montana governing corporations in general, except as herein otherwise specially provided.

History: En. Sec. 23, Ch. 89, L. 1927; re-en. Sec. 6014.27, R.C.M. 1935; R.C.M. 1947, 5-502.

32-1-324. Repealed. Sec. 3, Ch. 24, L. 1989.

History: En. Sec. 11, Ch. 89, L. 1927; re-en. Sec. 6014.15, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-209; amd. Sec. 3, Ch. 179, L. 1985.

32-1-325. Selection of officers and employees — minutes of meetings. (1) The board of directors of a bank must hold a meeting at least quarterly.

(2) The board of directors may elect a president, one or more vice-presidents, a cashier and one or more assistant cashiers, and other officers and employees which they may from time to time consider to be to the best interest of the bank and fix their compensation. The president shall be chosen from the board of directors.

(3) The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the dates of

the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. The minutes shall be read and approved at the following meeting of the board of directors, and the minutes of the following meeting shall show that fact. The minute book shall be kept in the office of the bank at all times and shall be presented to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank by it and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor.

History: **En. Sec. 12, Ch. 89, L. 1927; re-en. Sec. 6014.16, R.C.M. 1935; amd. Sec. 6, Ch. 431, L. 1975; R.C.M. 1947, 5-210; amd. Sec. 1, Ch. 264, L. 1983; amd. Sec. 4, Ch. 179, L. 1985.**

Cross-References

False statements and entries considered felony, 32-1-236.

Fraud by director, officer, or employee, 32-1-464.

Organization of subsidiary trust companies, 32-1-803.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-1-326 through 32-1-330 reserved.

32-1-331. Keeping list of stockholders. Every bank shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof and for their use, a book containing a list of stockholders in such corporation and the number of shares of stock held by each.

History: **En. Sec. 33, Ch. 89, L. 1927; re-en. Sec. 6014.37, R.C.M. 1935; R.C.M. 1947, 5-512.**

32-1-332. Transfer of stock. The delivery of a certificate of stock to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such transfer is recorded upon the books of the corporation or a new certificate issued to the person to whom it has been transferred.

History: **En. Sec. 22, Ch. 89, L. 1927; re-en. Sec. 6014.26, R.C.M. 1935; R.C.M. 1947, 5-501.**

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

32-1-333. Stockholders' liability — effect of insolvency on transfers of stock. (1) The stockholders of every bank shall be severally and individually liable, equally and ratably and not one for the other, for all contracts, debts, and engagements of such corporation, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No person holding stock as executor, administrator, guardian, or trustee and no person holding such stock as a pledge or collateral security shall be personally subject to any liability as stockholders in such corporation; but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator, intestate, ward, or the person interested in such trust fund would have been liable if he had been living or competent to act and hold the stock in his own name.

(2) The stockholders in any bank who shall have transferred their shares or registered the transfer thereof within 6 months before the failure of said bank to meet its obligations or with knowledge of such impending failure shall be liable to the same extent as if they had made no such transfer to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way recourse which such stockholder might otherwise have against those in whose name such shares are registered at the time of such failure.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; R.C.M. 1947, 5-401.

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Assessment on capital stock to make good impairment, 32-1-506.

Further duties of liquidating officer, 32-1-552.

32-1-334. Waiver of stockholders' liability. No bank shall make any contract with any of its depositors whereby the stockholders' liability provided for by this chapter is in any manner waived, and if any such contract shall be so made, such contract shall be void.

History: En. Sec. 42, Ch. 89, L. 1927; re-en. Sec. 6014.46, R.C.M. 1935; R.C.M. 1947, 5-521.

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

32-1-335. Purchase or loan of own capital stock prohibited. No bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless such purchase or loan shall be necessary to prevent loss to such bank on debts previously contracted in good faith. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

History: En. Sec. 36, Ch. 89, L. 1927; re-en. Sec. 6014.40, R.C.M. 1935; R.C.M. 1947, 5-515.

Cross-References

Restriction on investment in corporate stock, 32-1-422.

Purchase of obligation of bank by officer, 32-1-466.

32-1-336. Nonassessable preferred stock — authorization for issuing. Any domestic commercial bank, savings bank, trust company, or investment company may amend its articles of incorporation or articles of agreement by providing for the issuance of nonassessable preferred stock, and any such bank or company hereafter formed may provide in its articles for the issuance of such stock. Such amendment may be made by the adoption of a resolution by a vote of persons holding a majority of the stock of such corporation at a meeting held after 30 days' notice stating the purpose and the time and place of holding such meeting, either mailed or published in the manner provided in 32-1-354, and by filing a certified copy of such resolution in the office of the county clerk and recorder of the county in which the principal place of business is located and a certified copy thereof in the office of the secretary of state, certified and authenticated as provided in 32-1-355.

History: En. Sec. 1, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.1, R.C.M. 1935; R.C.M. 1947, 5-1127.

32-1-337. Preferred stock not subject to double liability or other responsibility. Such preferred stock shall not impose any double liability upon the subscriber or holder or subject the holder to responsibility for any contract, debt, or engagement of the issuing corporation.

History: En. Sec. 2, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.2, R.C.M. 1935; R.C.M. 1947, 5-1128.

32-1-338. Manner of issuing preferred stock. The preferred stock may be issued and sold upon terms and conditions approved by the department or required for the purchase of the stock by an agency or quasi-agency of the federal government.

History: En. Sec. 3, Ch. 15, Ex. L. 1933; re-en. Sec. 6016.3, R.C.M. 1935; amd. Sec. 63, Ch. 431, L. 1975; R.C.M. 1947, 5-1129.

32-1-339. Right of examination by stockholder. No stockholder of any bank incorporated under the laws of this state who is not a director shall have the right to inspect the books and records of such bank showing its transactions with any of its customers, but any such stockholder shall have the right to inspect during business hours the general statement book showing the general assets and liabilities of such bank.

History: En. Sec. 108, Ch. 89, L. 1927; re-en. Sec. 6014.119, R.C.M. 1935; R.C.M. 1947, 5-1035.

Cross-References

Examination and supervision by department, 32-1-211.

32-1-340. Conversion of surplus and undivided profits to capital stock. (1) A bank having a surplus and undivided profits equal to or in excess of 50% of its capital stock may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits.

(2) The increase may be made by the vote of two-thirds of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation.

(3) All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this chapter pertaining to surplus of banks when first incorporated.

(4) New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash for it, but it shall be charged upon the books of the bank and in the statements of the bank against surplus and undivided profits so that the combined capital, surplus, and undivided profits are not reduced by the issuance of the new stock.

(5) When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within 30 days approve or reject the plan. Its action shall be final, and written notice of it shall be given to the bank.

(6) If the department approves of the issuance of the new stock and so notifies the bank, the bank shall then file a certificate of issuance with the county clerk and recorder of the county in which the bank is located and with the secretary of state. Upon the filing with the secretary of state, the increase becomes effective.

History: En. Sec. 97, Ch. 89, L. 1927; re-en. Sec. 6014.108, R.C.M. 1935; amd. Sec. 36, Ch. 431, L. 1975; R.C.M. 1947, 5-1024.

Cross-References

Examination and supervision by department, 32-1-211.

Dividends, surplus, losses, and bad debts, 32-1-452.

Calculation of profits, 32-1-453.

32-1-341 through 32-1-350 reserved.

32-1-351. Increase or diminution of capital stock. Any bank now organized and existing and which may hereafter be organized may increase or diminish its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for its purposes within the limits prescribed by this chapter.

History: En. Sec. 14, Ch. 89, L. 1927; re-en. Sec. 6014.18, R.C.M. 1935; R.C.M. 1947, 5-212.

Cross-References

Organization of subsidiary trust companies, 32-1-803.

32-1-352. Change of corporate name authorized. The corporate name of any bank now organized and existing or which may hereafter be organized may be altered, changed, or amended as in this part provided.

History: En. Sec. 15, Ch. 89, L. 1927; re-en. Sec. 6014.19, R.C.M. 1935; R.C.M. 1947, 5-213.

Cross-References

Amendment to registration of assumed business name, 30-13-209.

32-1-353. Change of place of business and number of directors authorized. A bank may, upon approval of the board, change its principal place of business from one place to another in the same county or in an adjacent county within this state and may increase or diminish the number of trustees or directors in the manner provided in 32-1-354 through 32-1-356.

History: En. Sec. 16, Ch. 89, L. 1927; re-en. Sec. 6014.20, R.C.M. 1935; amd. Sec. 7, Ch. 431, L. 1975; R.C.M. 1947, 5-214.

Cross-References
Amendment to registration of assumed business name, 30-13-209.

32-1-354. Procedure for changes. Whenever any bank shall decide to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock or for changing its corporate name or for changing its principal place of business, it shall be the duty of the trustees or directors to publish a notice signed by at least a majority of them in a newspaper in the county, if any shall be published therein, for 6 successive weeks and to deposit a written or printed copy thereof in the post office, addressed to each stockholder at his usual place of residence, at least 6 weeks previous to the day of meeting, specifying the object of meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital or the name to which it is proposed that the bank shall be changed or to the new location or place to which the principal place of business shall be changed, and a vote of at least two-thirds of all the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock or to change its corporate name or to change its principal place of business.

History: **En. Sec. 17, Ch. 89, L. 1927; re-en. Sec. 6014.21, R.C.M. 1935; R.C.M. 1947, 5-215.**

Cross-References
Publication of legal notices, Title 18, ch. 7, part 2.
Amendment to registration of assumed business name, 30-13-209.
Hearings — notice, 32-1-204.

32-1-355. Certificate of proceedings — contents and effect. If, at the time and place specified in the notice provided for in 32-1-354, stockholders appear in person or by proxy representing not less than two-thirds of all the shares of stock of the corporation and organize by choosing one of the trustees or directors chairman of the meeting and also a suitable person for secretary and proceed to a vote of those present in person or by proxy and if two-thirds of the votes representing all the outstanding capital stock have been cast in favor of increasing or diminishing the amount of capital stock or of changing its corporate name or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation or the change in the principal place of business shall be made out, signed, and verified by the affidavit of the chairman and be countersigned by the secretary, and the certificate shall be acknowledged by the chairman. The certificate shall then be sent to the department which shall within 30 days of receipt either approve or reject the application for change. The action of the department on the application is final. If it approves the certificate, it shall notify the bank, at which time the certificate shall be filed in the office of the county clerk and recorder of the county in which the bank is located and in the office of the secretary of state. Upon the filing, the change is effective.

History: **En. Sec. 18, Ch. 89, L. 1927; re-en. Sec. 6014.22, R.C.M. 1935; amd. Sec. 8, Ch. 431, L. 1975; R.C.M. 1947, 5-216.**

Cross-References

Examination and supervision by Department, 32-1-211.

32-1-356. Procedure for change in number of directors. (1) A state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting shall constitute the board for the year, with all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting, or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company. However, the number of directors may not at any time be less than three.

(2) When a bank or trust company decides to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of the meeting must be deposited in the post office, addressed to each stockholder of record entitled to vote at the meeting under the articles of incorporation or amendments to them and the laws and constitution of Montana at his last known place of residence, at least 10 days previous to the date set for the holding of the meeting. In addition, the notice must be published once a week for 2 consecutive weeks in a newspaper published in the county where the principal place of business of the corporation is situated. If no newspaper is published in the county, it is not necessary to publish the notice. However, the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice.

(3) If, at the time and place specified in the notice of the special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds of all the shares of stock of the corporation appear in person or by proxy and vote in favor of the amendment, a certificate of the proceedings showing a compliance of the provisions of this chapter and the amendment relative to the number of directors shall be prepared, certified, and sworn to and filed with the department. The department shall, within 30 days after the receipt of the certificate, either approve or reject the amendment. The action of the department on the amendment is final. If it approves the amendment, it shall notify the bank, whereupon the certificate with the department's approval attached to it shall be filed in the office of the county clerk and recorder of the county in which the bank is situated and a certified copy of it shall be filed in the office of the secretary of state. Upon the filing of the certified copy with the secretary of state, the amendment becomes effective.

History: En. Sec. 19, Ch. 89, L. 1927; amd. Sec. 1, Ch. 145, L. 1931; re-en. Sec. 6014.23, R.C.M. 1935; amd. Sec. 1, Ch. 131, L. 1937; amd. Sec. 2, Ch. 7, L. 1965; amd. Sec. 9, Ch. 431, L. 1975; R.C.M. 1947, 5-217; amd. Sec. 5, Ch. 179, L. 1985.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Organization of subsidiary trust companies, 32-1-803.

32-1-357 through 32-1-360 reserved.

32-1-361. Change from state to national bank. Any bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of congress "to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof", approved June 3, 1864, and under Title 52 of the Revised Statutes of the United States, when stockholders owning two-thirds of the stock of the bank have voted to become such corporation or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States or when a majority of the directors of the bank, having been authorized in their discretion to make the change, shall, by a vote of the majority, decide to become such corporation. The cashier of the bank shall publish notice thereof for 30 days in the newspaper which the directors select and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders and notify the department that the bank has decided to become a corporation under the laws of the United States.

History: En. Sec. 75, Ch. 89, L. 1927; re-en. Sec. 6014.86, R.C.M. 1935; amd. Sec. 32, Ch. 431, L. 1975; amd. Sec. 17, Ch. 71, L. 1977; R.C.M. 1947, 5-1002.

32-1-362. National bank powers extended to state banks. (1) With the consent of the department, every bank organized under the laws of the state shall have power to and may engage in any activity or business in which such bank could engage if it were operating as a national bank. The department may prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by this section, provided that, subject to subsection (2), such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.

(2) If the United States congress allows national banks to establish branches without regard to state prohibitions, a bank organized under the laws of Montana may, with the consent of the department, establish a branch under the same conditions allowed national banks, despite the restrictions imposed by 32-1-372.

History: En. Sec. 1, Ch. 119, L. 1973; R.C.M. 1947, 5-1002.1; amd. Sec. 1, Ch. 163, L. 1981.

Cross-References

Authority of state banks to make real estate loans, 32-1-430.

Authorized activities of credit unions, 32-3-206.

32-1-363. Surrender of charter by state bank. (1) Any bank which will become a corporation for carrying on the business of banking under the laws of the United States shall cease to be a corporation under the laws of this state, except that for the term of 3 years thereafter its corporate existence shall be deemed to continue for the purposes of prosecuting and defending suits by and against it and of enabling it to close its concerns and to dispose of and convey its property.

(2) The members of the board of directors last in office, when such corporation shall have become a corporation under the laws of the United States, shall continue to be the board of directors of the corporation, with power to take all necessary measures to carry out and perfect such organization by signing the articles of association and the organization certificate and adopting such regulations as may be just and proper and not inconsistent with the acts of congress in relation thereto.

(3) Such change from a state to a national bank corporation shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national bank corporation or any tax imposed by the laws of this state up to the date of its becoming such national bank corporation, in proportion to the time which has elapsed since the next preceding payment thereof.

History: En. Sec. 76, Ch. 89, L. 1927; re-en. Sec. 6014.87, R.C.M. 1935; R.C.M. 1947, 5-1003.

Cross-References

Corporation license or income tax — banks and savings and loan associations, Title 15, ch. 31, part 7.

32-1-364. Increase or reduction of capital stock. The directors of such new corporation may reduce the capital stock of the bank to its par value by dividing the surplus among its stockholders or may retain such portion of such surplus as they may deem necessary. In case of an increase of the capital stock under the provisions of the acts of congress, the directors may charge the shares of such increased capital stock with a like amount to place the whole of such capital stock on an equality and may award such new stock, or such proportion or fractional parts thereof, to such persons as they shall determine are entitled thereto and as are provided in their articles of association and the acts of congress. New directors may be chosen at such time and in the manner provided in the articles of association and the acts of congress.

History: En. Sec. 77, Ch. 89, L. 1927; re-en. Sec. 6014.88, R.C.M. 1935; R.C.M. 1947, 5-1004.

32-1-365. Certificate of change to national bank. (1) When any such bank has decided to become a corporation under the laws of the United States, the directors shall immediately thereafter execute and transmit to the comptroller of the currency the proper certificate and other instruments for its conversion into a national bank corporation under the laws of the United States.

(2) When any such bank shall have become authorized to commence the business of banking under the laws of the United States, all the property of such bank shall immediately, by act of law and without any conveyance or transfer, be vested in and become the property of the national bank corporation into which such bank shall have been converted.

History: En. Sec. 78, Ch. 89, L. 1927; re-en. Sec. 6014.89, R.C.M. 1935; R.C.M. 1947, 5-1005.

32-1-366 through 32-1-370 reserved.

32-1-371. Consolidation or merger of banks. (1) The words "bank" or "banks" as used in 32-1-372 and this section include commercial banks, savings banks, trust companies, investment companies, and other such corporations carrying on the business of banking, trust company, or investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

(2) (a) Any two or more banks doing business in this state and under common ownership may, with the approval of the state banking board in the case of state banks, consolidate or merge into one bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Before a consolidation or merger becomes effective, it must be ratified by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding. The capital stock of the consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the banks so consolidating.

(b) Nothing in this section permits a bank or bank holding company located in another state to acquire by consolidation, merger, or otherwise any bank doing business in this state in contravention of 12 U.S.C. 1842.

(c) Two or more banks under common ownership may not consolidate or merge unless all banks under the common ownership are parties to the consolidation or merger.

(3) Upon consolidation or merger, the corporate franchise, corporate life, being, and existence and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, guardian, and all and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed of the consolidating or merging banks shall, without the necessity of any instrument of transfer, become consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank. The consolidated or merged bank shall have and enjoy the right equal as to priorities with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office.

(4) Upon consolidation or merger, the consolidated or merged bank shall designate and operate one of the prior main banking houses of the consolidating or merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.

(5) A branch bank must offer all services offered at a main banking house.

History: En. Sec. 94, Ch. 89, L. 1927; amd. Sec. 1, Ch. 108, L. 1931; re-en. Sec. 6014.105, R.C.M. 1935; amd. Sec. 171, Ch. 431, L. 1975; amd. Sec. 19, Ch. 71, L. 1977; R.C.M. 1947, 5-1021; amd. Sec. 4, Ch. 322, L. 1989.

Cross-References

Powers and duties of State Banking Board, 32-1-202.

Hearings — notice, 32-1-204.

Building and loan associations — consolidation, transfer, and branching, 32-2-271.

Business corporations — merger, consolidation, share exchange, and sale of assets, Title 35, ch. 1, part 8.

32-1-372. Branch bank — detached facilities. (1) A bank may establish and maintain a branch bank only as provided in 32-1-371 and this section and, in the case of a bank organized under the laws of this state, with the prior approval of the state banking board, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) With the prior approval of the department, any bank or branch bank doing business in this state may establish and maintain not more than one detached drive-in and walk-up facility consisting of one or more teller windows. The detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located. The facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility must be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and other transactions that are normally and usually conducted or handled at teller windows in the main banking house or branch bank.

(3) Any bank authorized to do banking business in this state may utilize a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals hereby authorized is not subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

(4) A bank, other than a bank owned by a holding company not located in Montana, may establish, maintain, and operate a branch bank in a city in which no bank or branch bank is located at the time the branch bank is to be established if that city is in the county or a county adjoining the county in which the main banking house of the branch bank is located.

(5) Common ownership notwithstanding, a bank may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority. Nothing in this subsection allows a bank owned by a holding company not located in this state to acquire an interest in a bank in contravention of 12 U.S.C. 1842.

(6) A branch bank must have a community advisory board.

History: **En. Sec. 101, Ch. 89, L. 1927; re-en. Sec. 6014.112, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1963; amd. Sec. 1, Ch. 80, L. 1965; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 22, Ch. 503, L. 1977; R.C.M. 1947, 5-1028; amd. Sec. 5, Ch. 322, L. 1989; amd. Sec. 1, Ch. 15, L. 1991.**

Compiler's Comments

1991 Amendment: Near beginning of (4), after "branch bank", deleted former (4)(a) that read: "(a) in the county or a county adjoining the county in which the main banking house of the branch bank is located" and near end, after "established", inserted "if that city is in the county or a county adjoining the county in which the main banking house of the branch bank is located"; and made minor changes in style. Amendment effective February 7, 1991.

Cross-References

Trust offices of subsidiary trust companies, 32-1-805.

Trust offices of affiliated banks, 32-1-806.

Montana Electronic Funds Transfer Act, Title 32, ch. 6, part 1.

Satellite terminals, Title 32, ch. 6, part 2.

Geographical restrictions on certain satellite terminals, 32-6-204.

32-1-373. Banks may join federal reserve bank. Any bank is hereby authorized and empowered to join or associate itself with the federal reserve bank, or any branch thereof, and nothing herein contained shall prevent or prohibit any bank from joining or associating itself with any such banks or branch thereof or from investing any part of its capital or surplus in the stock of such bank, in accordance with the terms and provisions of the act of congress creating such association. Any bank joining or associating itself with such bank shall be permitted to conform to and transact its business in accordance with the terms and provisions of the act of congress creating the same and the rules of such federal reserve bank.

History: **En. Sec. 28, Ch. 89, L. 1927; re-en. Sec. 6014.32, R.C.M. 1935; R.C.M. 1947, 5-507.**

Cross-References

Reserve requirements, 32-1-455.

32-1-374. Reorganization of national bank as state bank. Any national bank authorized to dissolve, and which shall have taken the necessary steps to effect dissolution, may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of such bank and with the approval of the department. The stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth therein the written consent of such stockholders. Upon the filing of said articles as provided by law and upon the approval of the department, such bank shall be deemed to be reorganized under this chapter, and thereupon all assets, real and personal, of such dissolved national bank shall be vested in and become the property of such reorganized state bank, subject to all liabilities of such national bank not liquidated before such reorganization.

History: **En. Sec. 79, Ch. 89, L. 1927; re-en. Sec. 6014.90, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1006.**

Cross-References

Examination and supervision by department, 32-1-211.

32-1-375. Prohibition of acquisition — exception. (1) Notwithstanding any other provision of law, a bank holding company or any other company may not acquire or control an institution in this state that is an "insured bank" as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) or any institution eligible to become an insured bank as defined therein if the institution does not both accept demand deposits and engage in the business of making commercial loans.

(2) Nothing in this section prohibits the continued control of a financial institution eligible for insurance under the Federal Deposit Insurance Act by a company that acquired the financial institution prior to March 1, 1987.

History: En. Sec. 1, Ch. 491, L. 1987.

Cross-References

Demand deposits defined, 32-1-109.

Federal deposit insurance corporation, Title 32, ch. 1, part 6.

Part 4

Operation and Regulation

Part Cross-References

Homeowners' loan corporation bonds — investment and security, 7-15-4504, 7-15-4505, 32-1-424, 32-2-406, 33-2-833, 72-31-102.

Deposit of state money in banks — interest thereon, 17-6-102, 17-6-104, 17-6-105.

U.C.C. — commercial paper, Title 30, ch. 3.

U.C.C. — bank deposits and collections, Title 30, ch. 4.

U.C.C. — letters of credit, Title 30, ch. 5.

Warranty of money, 30-11-114.

Credit Transactions and Relationships, Title 31.

Issuing bad checks, 45-6-316.

Deceptive practices, 45-6-317.

Forgery, 45-6-325.

Discrimination by financial institutions prohibited, 49-2-101, 49-2-305, 49-2-307, 49-3-206.

Safe deposit box — joint tenancy, 70-1-308.

Banker's lien, 71-3-1502.

Delivery of money or personal property to a minor under Uniform Probate Code, 72-5-104.

Inheritance tax — transfers by foreign representatives, 72-16-701 through 72-16-706.

Uniform Transfers to Minors Act, Title 72, ch. 26.

32-1-401. Bank advertising before issuance of charter. It shall be unlawful for any individual, firm, or corporation to advertise, publish, or otherwise promulgate that it is engaged in the banking business without first having obtained authority from the department, as herein provided. Any such individual or member of such firm or officer of any such corporation so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by the laws of this state.

History: En. Sec. 107, Ch. 89, L. 1927; re-en. Sec. 6014.118, R.C.M. 1935; R.C.M. 1947, 5-1034.

Cross-References

Powers and duties of State Banking Board, 32-1-202.

Organization and incorporation — articles of agreement, 32-1-301.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

32-1-402. When advertising as bank prohibited — trade names restricted. (1) A person, firm, company, partnership, or corporation, either domestic or foreign, not subject to the supervision of the department and not required by the provisions of this chapter to report to it and which has not received a certificate to do a banking business from the department, may not:

(a) advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit therefor; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) That person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on them an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) That person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) A person, firm, company, partnership, or corporation, domestic or foreign, not subject to the supervision of the department and not required by the provisions of this chapter to report to it and which has not received from the department a certificate to do a banking business, may not transact business under a name or title which contains the word “bank”, “banker”, “banking”, “savings bank”, “saving”, “trust”, “trustee”, “trust company”, or “investment company”. Nothing contained in this section shall prohibit use of the word “bank” in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to Title 12, United States Code, section 1844, and such use of the word “bank” is hereby authorized.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining that person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require.

History: Ap. p. Sec. 29, Ch. 89, L. 1927; re-en. Sec. 6014.33, R.C.M. 1935; amd. Sec. 14, Ch. 431, L. 1975; amd. Sec. 6, Ch. 71, L. 1977; Sec. 5-508, R.C.M. 1947; Ap. p. Sec. 1, Ch. 217, L. 1977; Sec. 5-508.1, R.C.M. 1947; R.C.M. 1947, 5-508, 5-508.1.

Cross-References

Injunctions, Title 27, ch. 19.

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Foreign corporations, 32-1-103.

Organization and incorporation — articles of agreement, 32-1-301.

Incorporation, 32-1-302.

32-1-403. Penalty for transacting business without certificate. (1) A person, firm, company, partnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings and issuing notes or certificates of deposit for them or advertising that he or it is transacting the business of a bank, savings bank, or trust company or making use of an office sign at the place where the business is transacted, having on it an artificial or corporate name or other words indicating that the place or office is the place or office of a bank, savings bank, or trust company or that deposits are received there or payments made on check or that interest is paid on deposits or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and a person, firm, company, partnership, or corporation, domestic or foreign, using or circulating any letterheads, billheads, blank notes, blank receipts, certificates, or circulars or any written or printed or partly written and partly printed paper whatever, having on it an artificial or corporate name or advertising that the business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting that business and must have received from the department, as provided for in this chapter, a certificate to do a banking business.

(2) A person, firm, company, partnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(3) Upon action brought by the department, the court may issue an injunction restraining a person, firm, company, partnership, or corporation from further violating any provision of this section and may enter a further order or decree as equity and justice require.

(4) A person, firm, company, partnership, or corporation doing any of the things or transacting any of the business defined in this section must transact that business according to the provisions of the Bank Act, and the department may examine the accounts, books, papers, cash, and credits of that person, firm, company, partnership, or corporation, domestic or foreign, in order to ascertain whether that person, firm, company, partnership, or corporation has violated or is violating any provisions of this section.

History: En. Sec. 30, Ch. 89, L. 1927; re-en. Sec. 6014.34, R.C.M. 1935; amd. Sec. 15, Ch. 431, L. 1975; R.C.M. 1947, 5-509.

Cross-References

Injunctions, Title 27, ch. 19.

Examination and supervision by department, 32-1-211.

Organization and incorporation — articles of agreement, 32-1-301.

Incorporation, 32-1-302.

32-1-404 through 32-1-410 reserved.

32-1-411. Extent assets may be pledged. No bank, banker, or bank officer shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed its assets in a ratio exceeding 1 1/2 times the amount borrowed (except as otherwise authorized by the department).

History: En. Sec. 99, Ch. 89, L. 1927; re-en. Sec. 6014.110, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1026.

Cross-References

Examination and supervision by department, 32-1-211.

32-1-412. Borrowing money — limitations. (1) A bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. At no time shall the bills payable and rediscounts of a bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) A bank may not at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

History: (1)En. Sec. 110, Ch. 89, L. 1927; re-en. Sec. 6014.121, R.C.M. 1935; amd. Sec. 37, Ch. 431, L. 1975; Sec. 5-1037, R.C.M. 1947; (2)En. Sec. 54, Ch. 89, L. 1927; re-en. Sec. 6014.58, R.C.M. 1935; amd. Sec. 19, Ch. 431, L. 1975; Sec. 5-533, R.C.M. 1947; R.C.M. 1947, 5-533, 5-1037.

Cross-References

Amount of capital, 32-1-307.

Pledging building and loan association assets, 32-2-405.

Credit unions — loan limit, 32-3-603.

32-1-413. Borrowing money for capital purposes — status of capital. Notwithstanding any other provision of law, any commercial bank, savings bank, trust company, or investment company, now in existence or which may be hereafter formed, shall have the power to borrow money for capital purposes upon such terms and conditions as may be approved by the department and for this purpose may issue capital notes or debentures therefor, such notes or debentures to be subordinate in right of payment to the payment in full of all deposits of such bank, savings bank, trust company, or investment company. The amount of money so borrowed shall be considered as capital for the purpose of determining the maximum amount of money that may be loaned by such bank, savings bank, trust company, or investment company to any person, partnership, or corporation and for the purpose of determining the maximum amount of money which such bank may borrow and for all other purposes of bank capital as may be required by law.

History: En. Sec. 1, Ch. 16, Ex. L. 1933; re-en. Sec. 6017.1, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1967; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1130; amd. Sec. 16, Ch. 634, L. 1979.

Cross-References

Examination and supervision by department, 32-1-211.

Amount of capital, 32-1-307.

32-1-414. No certificate of deposit to issue for borrowed money. No bank shall issue its certificate of deposit for the purpose of borrowing money or make partial payments upon any certificate of deposit.

History: En. Sec. 111, Ch. 89, L. 1927; re-en. Sec. 6014.122, R.C.M. 1935; R.C.M. 1947, 5-1038.

32-1-415 through 32-1-420 reserved.

32-1-421. Investment of capital of savings banks. (1) The term "savings bank" as used in this section means any bank organized to do the business specified in 32-1-106.

(2) (a) At least one-half of the paid-in capital of a savings bank and one-half of the whole amount deposited in the savings bank must be invested in bonds or other securities of the United States or any of the states of the United States or any county, city, town, or school district of this state on which interest is regularly payable or federal land bank bonds or loaned on unencumbered real estate worth at least double the amount to be secured.

(b) The remainder may be invested in bonds or securities listed in subsection (2)(a) or in approved personal securities. However, a loan may not be made on personal securities of less than two responsible persons or collateral security to be approved by the directors, and a loan upon personal security may not be made to any person or partnership to an amount exceeding $10,000.

(c) Investments in United States government obligations permitted under subsection (2)(a) or (2)(b) may be made either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(3) A president, vice-president, director, or other officer or servant of a savings bank may not directly or indirectly borrow any of the funds of the bank or of its deposits or in any manner use the same in his private affairs or business. A director may not receive any pay, salary, or emolument until the interest as the directors have determined to allow depositors has been provided for in accordance with the regulations of the corporation.

(4) The real estate that the corporation may lawfully purchase, hold, and convey is the real estate that is:

(a) necessary for the proper transaction of its business, not exceeding in value $50,000;

(b) mortgaged to it in good faith for money loaned pursuant to this chapter or given as security for money loaned or advanced;

(c) purchased at the sale on judgment or decree obtained or rendered on money loaned or advanced.

(5) Savings banks organized under the provisions of this chapter may not purchase, hold, or convey real estate in any other case or for any other purpose than is specified in subsection (4) and may not buy or sell any personal property, except such as may be necessary for the proper transaction of its business or as may have been pledged, mortgaged, or assigned to it to secure money loaned or advanced.

History: En. Sec. 24, Ch. 89, L. 1927; re-en. Sec. 6014.28, R.C.M. 1935; R.C.M. 1947, 5-503; amd. Sec. 3, Ch. 137, L. 1989.

Cross-References

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

Investments authorized, certain government guaranteed bonds, 7-15-4505.

Bond Validating Act, Title 17, ch. 5, part 2.

Economic development bonds — legal investments, 17-5-1525.

Municipal Finance Consolidation Act bonds — legal investments, 17-5-1628.

School bonds, Title 20, ch. 9, part 4.

Contracts, Title 28, ch. 2 and 3.

Mortgages of real property, Title 71, ch. 1, part 2.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-1-422. Restriction on investment in corporate stock — rulemaking authority. (1) No commercial or savings bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by the bank within 6 months thereafter, if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after such purchase or acquisition, or if the stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to the stock's sale. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

(2) Notwithstanding subsection (1), a bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank, without limitation of amount; and

(c) shares of stock in a Montana capital company within limits prescribed by the Montana Capital Company Act.

(3) A bank may invest any amount up to 5% of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) The department shall adopt rules to implement this section.

History: En. Sec. 39, Ch. 89, L. 1927; re-en. Sec. 6014.43, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1973; R.C.M. 1947, 5-518; amd. Sec. 1, Ch. 259, L. 1983; amd. Sec. 3, Ch. 199, L. 1989; (4) En. Sec. 6, Ch. 199, L. 1989.

Cross-References

Rule defined, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

U.C.C. — investment securities, Title 30, ch. 8.

Banks may join federal reserve bank, 32-1-373.

Business corporations — shares, Title 35, ch. 1, part 6.

Montana Capital Company Act, Title 90, ch. 8.

32-1-423. Real estate which banks may purchase, hold, or convey. (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate which:

(a) is necessary for the proper transaction of its business, but it shall not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) is mortgaged to it in good faith by way of security for loans previously made or moneys due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) of this section may not be held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the department. The real estate shall be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title.

History: En. Sec. 25, Ch. 89, L. 1927; re-en. Sec. 6014.29, R.C.M. 1935; amd. Sec. 12, Ch. 431, L. 1975; amd. Sec. 4, Ch. 71, L. 1977; R.C.M. 1947, 5-504.

Cross-References

Definitions and kinds of estates in real property, Title 70, ch. 15.

Mortgages, Title 71, ch. 1.

32-1-424. Investments of financial institutions. (1) Trust and investment companies may lease, purchase, hold, and convey all real or personal property necessary to carry on their authorized business, as well as the real or personal property the board of directors considers necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts.

(2) The board of directors of a corporation may invest the capital and assets of the corporation and keep the capital and assets invested in securities to be approved by the board, and the board may make investments of its capital and assets and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or nonnegotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school district of this state or any other state of the United States legally authorized to issue the bonds or warrants, or bonds or obligations of the United States.

(3) Notwithstanding other provisions of the law, it is lawful for a bank, trust company, investment company or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in:

(a) debentures issued by the federal housing administrator and in obligations of national mortgage associations; and

(b) United States government obligations, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(4) An investment in United States government obligations as provided in subsection (3)(b) may not be made for a term longer than 5 years.

History: (1), (2)En. Sec. 26, Ch. 89, L. 1927; re-en. Sec. 6014.30, R.C.M. 1935; Sec. 5-505, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, Ex. L. 1933; amd. Sec. 1, Ch. 37, L. 1935; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1937; Sec. 35-142, R.C.M. 1947; R.C.M. 1947, 5-505, 35-142(part); amd. Sec. 1, Ch. 36, L. 1979; amd. Sec. 4, Ch. 137, L. 1989.

Cross-References

Security for deposits of public funds, 17-6-103.

U.C.C. — investment securities, Title 30, ch. 8.

Building and loan associations — investments, 32-2-406.

Credit unions — investment of funds, 32-3-701.

Mortgages, Title 71, ch. 1.

32-1-425. Definitions. For the purposes of 32-1-426 and 32-1-427, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting in, or constructive; executor; administrator; guardian; committee; conservator; curator; tutor; custodian; nominee; receiver; trustee in bankruptcy; assignee for the benefit of creditors; partner; agent; officer of any corporation, public or private; public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

History: En. 5-1601 by Sec. 3, Ch. 278, L. 1977; R.C.M. 1947, 5-1601.

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Trust code, Title 72, ch. 33 through 36.

32-1-426. Deposit of securities in central depository. (1) Notwithstanding any other provision of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 30-8-102. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or a custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank or trust company in the clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on July 1, 1977, or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

History: En. 5-1602 by Sec. 4, Ch. 278, L. 1977; R.C.M. 1947, 5-1602.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Trust administration, Title 72, ch. 34.

32-1-427. Fiduciaries — deposit of securities with a federal reserve bank. (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 32-1-425 and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules with respect to the making and maintenance of such deposit as, in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries and custodians for fiduciaries acting on July 1, 1977, or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

History: En. 5-1603 by Sec. 5, Ch. 278, L. 1977; R.C.M. 1947, 5-1603.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Banks allowed to join federal reserve bank, 32-1-373.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Trust administration, Title 72, ch. 34.

32-1-428 and 32-1-429 reserved.

32-1-430. Authority of state banks to make real estate loans. A bank in this state has from time to time the same authority to make loans upon real estate which may be given by acts of congress or the federal reserve system to national banks or bank members of the federal reserve system.

History: En. Sec. 27, Ch. 89, L. 1927; re-en. Sec. 6014.31, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977; R.C.M. 1947, 5-506(part).

Cross-References

Loan of money — what constitutes, 31-1-101.

National bank powers extended to state banks, 32-1-362.

Certificate of change to national bank, 32-1-365.

Mortgages, Title 71, ch. 1.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-431. Limitation on real estate loans. (1) A bank organized under the laws of this state may make real estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties, and may purchase an obligation so secured when the entire amount of the obligation is sold to the bank. The amount of the loan may not exceed 50% of the appraised value of the real estate offered as security, and the loan may not be made for a longer period than 5 years, except that:

(a) the loan may be made in an amount not to exceed 60% of the appraised value of the real estate offered as security and for a term not longer than 20 years if the loan is secured by an amortized mortgage, deed of trust, or similar instrument, under the terms of which the installment payments are sufficient to amortize 40% or more of the principal of the loan within not more than 20 years; and

(b) a bank may not make those loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of 60% of the amount of its time and saving deposits, whichever is greater.

(2) Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed 6 months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, are not loans secured by real estate within the meaning of this section but shall be classed as ordinary commercial loans. A bank may not invest in or be liable on any of those loans in an aggregate amount in excess of 50% of its actually paid-in and unimpaired capital.

(3) Loans made to establish rural or commercial businesses, which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment has been made by a federal reserve bank or in which an agency of the federal government cooperated or purchased a participation in, are not subject to the restrictions or limitations of this section upon loans secured by real estate.

(4) The limitations and restrictions imposed by this section do not prevent the renewal or extension of loans made before February 18, 1941, and do not apply to real estate loans which are insured under the provisions of any act of congress. Those limitations and restrictions do not apply to the making, extension, or renewal of any loans made under subchapter II of the act of congress known as the Servicemen's Readjustment Act of 1944 or any amendment or supplement to that act.

(5) This section, however, does not prevent a bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the real estate or from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith. These provisions do not prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when, in the judgment of the directors of the bank, the subsequent liens are necessary further to secure the payment of any debts and save the bank from loss.

History: En. Sec. 27, Ch. 89, L. 1927; re-en. Sec. 6014.31, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959; amd. Sec. 13, Ch. 431, L. 1975; amd. Sec. 5, Ch. 71, L. 1977; R.C.M. 1947, 5-506(part).

Cross-References

Economic development bonds — procedure prior to financing projects, 17-5-1526.

Economic development bonds — procedure prior to financing major projects, 17-5-1527.

Loan of money — what constitutes, 31-1-101.

Mortgages, Title 71, ch. 1.

Liens, Title 71, ch. 3.

Montana Agricultural Loan Authority Act — loan agreement, 80-12-201.

32-1-432. Limitations on loans. (1) (a) The total loans to a person, partnership, or corporation by a bank, including loans to a partnership and to the several members thereof, shall at no time exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, may not be considered as money borrowed.

(c) The limitations imposed on total loans by this section do not apply to loans and investments secured by obligations of the United States having a value of 100% of the amount loaned or invested or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least 120% of the amount loaned on them.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the several members of a firm, partnership, or unincorporated association to the loaning bank shall be included in the liabilities of the firm, partnership, or unincorporated association. That portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible shall be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds made by a bank to another bank if the term of the loan does not exceed 2 business days.

(6) The limitations of this section do not apply to the extent that a loan is covered by a guaranty or by commitments or agreements to take over or purchase such loan made by an agency or board of the state of Montana authorized by law to provide such guaranties, commitments, or agreements.

History: En. Sec. 44, Ch. 89, L. 1927; re-en. Sec. 6014.48, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, L. 1969; amd. Sec. 1, Ch. 118, L. 1973; amd. Sec. 17, Ch. 431, L. 1975; R.C.M. 1947, 5-523; amd. Sec. 1, Ch. 258, L. 1983; amd. Sec. 1, Ch. 315, L. 1985.

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

Loan of money — what constitutes, 31-1-101.

32-1-433. Investment in certain securities — rulemaking authority. (1) A bank may purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures, as provided in rules adopted by the department. A bank may hold without limit investment securities that are general obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, or general obligations of any state.

(2) The department shall adopt rules to implement this section.

History: En. Sec. 38, Ch. 89, L. 1927; re-en. Sec. 6014.42, R.C.M. 1935; amd. Sec. 7, Ch. 71, L. 1977; R.C.M. 1947, 5-517; amd. Sec. 1, Ch. 535, L. 1983; amd. Sec. 4, Ch. 199, L. 1989; (2) En. Sec. 6, Ch. 199, L. 1989.

Cross-References

Rule defined, 2-4-102.

Adoption and publication of rules, Title 2. ch. 4, part 3.

County general obligation bonds, Title 7, ch. 7, part 22.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

Bond Validating Act, Title 17, ch. 5, part 2.

Economic development bonds — procedure prior to financing projects, 17-5-1526.

Economic development bonds — procedure prior to financing major projects, 17-5-1527.

School bonds, Title 20, ch. 9, part 4.

Montana Agricultural Loan Authority Act — loan agreements, 80-12-201.

32-1-434. Financial institutions authorized to obtain insurance and make loans when approved by federal housing administrator. Notwithstanding any other provisions of the law of this state restricting the amount of any loan in relation to the value of the real estate and/or restricting the term of any such loan and/or restricting the rate of interest on any such loan, it shall be lawful for any corporation, bank, trust company, insurance company, investment company, and any other financial institution which has been approved as a mortgagee by the federal housing administrator to obtain insurance and to make such loans secured by real estate as the federal housing administrator insures or makes a commitment to insure.

History: En. Sec. 1, Ch. 8, L. 1935; re-en. Sec. 6018.1, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1937; R.C.M. 1947, 5-1131.

Cross-References

Insurance on deposits of public funds, 17-6-102.

32-1-435. Federal housing securities eligible collateral. Wherever collateral must or may be furnished by any depository in the state of Montana as security for the deposit of any funds whatsoever or wherever collateral must or may be deposited with any official of the state of Montana pursuant to any statute of this state, mortgages insured and debentures issued by the federal housing administrator shall be considered eligible collateral for such purposes.

History: En. Sec. 2, Ch. 25, L. 1937; R.C.M. 1947, 5-1132.

Cross-References

Security for deposits of public funds, 17-6-103.

32-1-436. Repealed. Sec. 2, Ch. 9, L. 1983.

History: En. Sec. 48, Ch. 89, L. 1927; re-en. Sec. 6014.52, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1969; amd. Sec. 1, Ch. 196, L. 1975; R.C.M. 1947, 5-527.

32-1-437. Acceptance and issuance of drafts — rulemaking authority. (1) Every bank organized and existing under the laws of Montana shall have power and authority to accept for payment at a future date drafts drawn upon it by its customers, authorizing holders thereof to draw drafts upon it or its correspondents at sight or on time, provided that the total amount of drafts so accepted for any one person, firm, or corporation shall not at any one time exceed 20% of the capital and surplus of the accepting or issuing bank.

(2) The department shall adopt rules to implement this section.

History: En. Sec. 74, Ch. 89, L. 1927; re-en. Sec. 6014.85, R.C.M. 1935; amd. Sec. 11-103, Ch. 264, L. 1963; R.C.M. 1947, 5-1001; amd. Sec. 5, Ch. 199, L. 1989; (2) En. Sec. 6, Ch. 199, L. 1989.

Cross-References

Rule defined, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

U.C.C. — bank deposits and collections, Title 30, ch. 4.

32-1-438 and 32-1-439 reserved.

32-1-440. Financial institution's responsibility to provide notice when funds become available for withdrawal. (1) A depository bank shall provide clear and conspicuous written notice of the time periods and exceptions to the periods, concerning when funds become available for withdrawal as of right on deposit by check or similar instrument in the customer's deposit account. The notice must state the cutoff hour, if any, fixed by the financial institution after which an item is treated as being received at the opening of the next business day.

(2) This notice must be:

(a) provided to a potential customer prior to opening a deposit account;

(b) mailed to each of the financial institution's present customers on or before December 31, 1985; and

(c) posted in a conspicuous manner at each financial institution, automatic teller machine location, or other device that accepts deposits.

(3) A deposit slip or envelope, or any other printed form furnished by the depository financial institution used in connection with deposits, must contain the following notice, printed in a conspicuous manner: "Your deposit may not be available for immediate withdrawal. Consult posted notices for further information.

History: En. Sec. 1, Ch. 491, L. 1985.

Cross-References

Bank, 30-1-201.

Customer, 30-4-104.

Item, 30-4-104.

U.C.C. — depositary bank defined, 30-4-105.

When certain credits become available for withdrawal, 30-4-213.

32-1-441. Certified checks. (1) Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm, or corporation drawing the same.

(2) It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank, unless at the time such check is certified the person, firm, or corporation drawing the check has on deposit with the bank an amount of money subject to the payment of such check equal to the amount specified in such check.

(3) Any officer or employee of any bank who shall willfully violate the provisions of this section or shall resort to any device or receive any fictitious obligation, directly or indirectly, in order to evade the provisions hereof shall be guilty of felony.

History: En. Sec. 47, Ch. 89, L. 1927; re-en. Sec. 6014.51, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1947; R.C.M. 1947, 5-526.

Cross-References

False statements and entries considered felony, 32-1-236.

Felony charges — suspension or prohibition, 32-1-908.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

When no penalty specified — felony, 46-18-213.

32-1-442. Joint deposits — survivorship. (1) When a deposit has been made or shall hereafter be made in any bank transacting business in this state in the names of two or more persons, payable to either or payable to either or the survivor, or any survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to any of said persons, whether the other or others be living or not. The receipt or acquittance of the person so paid shall be a valid and sufficient release or discharge to the bank for any payment so made.

(2) The term "deposit" shall include certificates of deposit heretofore or hereafter issued.

History: En. Sec. 49, Ch. 89, L. 1927; re-en. Sec. 6014.53, R.C.M. 1935; amd. Sec. 1, Ch. 91, L. 1967; R.C.M. 1947, 5-528.

Cross-References

Building and loan associations, joint ownership of shares in, 32-2-416.

Credit unions, joint accounts or ownership of shares in, 32-3-505.

Safe deposit box — joint tenancy, 70-1-308.

Distribution when joint tenant fails to survive by 120 hours, 70-1-309.

32-1-443. Trust deposits — payment. Whenever any deposit shall be made in any bank by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said deposit was made.

History: En. Sec. 50, Ch. 89, L. 1927; re-en. Sec. 6014.54, R.C.M. 1935; R.C.M. 1947, 5-529.

Cross-References

Trust code, Title 72, ch. 33 through 36.

32-1-444. Deposit in name of minor. Whenever any deposit shall be made in any bank by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the deposit was made, and the receipt of such minor is a sufficient release or discharge for such deposit to the bank.

History: **En. Sec. 51, Ch. 89, L. 1927; re-en. Sec. 6014.55, R.C.M. 1935; amd. Sec. 9, Ch. 71, L. 1977; R.C.M. 1947, 5-530.**

Cross-References

Parental control over property of child, 40-6-232.

Periods of minority — how calculated, 41-1-102.

Minor cannot disaffirm certain obligations, 41-1-306.

Uniform Transfers to Minors Act, Title 72, ch. 26.

32-1-445. Demand or time deposits. Demand deposits, within the meaning of this chapter, shall comprise all deposits payable within 7 days, and time deposits shall comprise all deposits payable after 7 days and all savings accounts and certificates of deposit which are subject to not less than 7 days' notice before payment.

History: **En. Sec. 52, Ch. 89, L. 1927; re-en. Sec. 6014.56, R.C.M. 1935; R.C.M. 1947, 5-531; amd. Sec. 1, Ch. 75, L. 1985.**

Cross-References

Demand deposits defined, 32-1-109.

Time deposits defined, 32-1-109.

32-1-446. Safe deposit department. Any bank may conduct a safe deposit department but shall not invest more than one-tenth of its capital and surplus in such safe deposit department. The liability of any bank for the safekeeping and protection of the contents of safety deposit boxes shall be determined by the contract endorsed on the receipt delivered to the renter of said box at the time of the rental, but in any event the obligation of the bank shall be limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.

History: **En. Sec. 35, Ch. 89, L. 1927; re-en. Sec. 6014.39, R.C.M. 1935; R.C.M. 1947, 5-514.**

Cross-References

Safe deposit box — joint tenancy, 70-1-308.

32-1-447. Giving security for deposit prohibited — exceptions. It is unlawful for any bank to pledge, mortgage, or hypothecate to any depositor any of its real or personal property as security for any deposit, and any pledge, mortgage, or hypothecation made in violation thereof is unenforceable. This provision does not apply to any deposits of money of the United States, public funds deposited in accordance with the provisions of any depository act of this state or the United States, or bankruptcy estate funds or deposits, including deposits of receivers or trustees in bankruptcy, deposited under the direction and supervision of a court of record of the state of Montana or of the United States.

History: **En. Sec. 112, Ch. 89, L. 1927; re-en. Sec. 6014.123, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1941; amd. Sec. 22, Ch. 71, L. 1977; R.C.M. 1947, 5-1039.**

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Security for deposits of public funds, 17-6-103.

Receivers — investment of funds, 27-20-303.

Claims — order of payment — priorities, 32-1-534.

32-1-448. Payments to foreign administrator. Any bank doing business in this state may pay any money remaining to the credit of a deceased depositor or deliver any personal property in its possession belonging to such deceased depositor to an administrator or executor of such depositor duly appointed and qualified in another state, provided no demand therefor shall have been previously made by an administrator or executor appointed in any county of this state, and such payment shall discharge the bank making the same from its liability on account of such deposit.

History: En. Sec. 104, Ch. 89, L. 1927; re-en. Sec. 6014.115, R.C.M. 1935; R.C.M. 1947, 5-1031.

Cross-References

Payment of debt and delivery of property to foreign representative, 72-4-306.

32-1-449 and 32-1-450 reserved.

32-1-451. Statement of capital, resources, and liabilities. No bank or officer thereof shall advertise in any manner or publish any statement of the capital authorized or subscribed unless it or he advertises and publishes in connection therewith the amount of capital actually paid up. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

History: En. Sec. 32, Ch. 89, L. 1927; re-en. Sec. 6014.36, R.C.M. 1935; R.C.M. 1947, 5-511.

Cross-References

Amount of capital, 32-1-307.

32-1-452. Dividends, surplus, losses, and bad debts. (1) The directors of any bank may, at certain times and in such manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the banks as may be appropriated for that purpose, but every bank shall, before declaring any such dividend, carry at least 25% of its net earnings for the period covered by the dividend to its surplus, until such surplus shall amount to 50% of its paid-up capital stock. The whole or any part of such surplus may at any time be converted into paid-in capital, and in such event the surplus shall be restored in the manner above provided until it amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be created, and nothing herein contained shall be construed as prohibitory thereof.

(2) No dividend shall be declared or paid while there shall remain among the ledger assets of the bank any item which shall properly be classified as a bad debt. Under the terms of this section and before any dividend can be paid, all debts due a bank on which the interest is past due and unpaid for a period of 12 months after maturity, unless the same be well secured or in legal

process of collection, and all judgments held by the bank after 2 years from the date of rendition, exclusive of time consumed in appeal, unless payments have been made, shall be considered bad debts. Such bad debts as hereinbefore defined shall be charged off the books of such bank before any dividend is declared.

(3) Losses sustained by a bank in excess of its undivided profits may be charged to and paid from the surplus, in which event such surplus shall be restored in the manner above provided in the amount required by this chapter.

History: En. Sec. 34, Ch. 89, L. 1927; re-en. Sec. 6014.38, R.C.M. 1935; R.C.M. 1947, 5-513.

Cross-References

Report of declaration of dividend, 32-1-232.

Conversion of surplus and undivided profits to capital stock, 32-1-340.

32-1-453. Calculation of profits. Interest or commissions unpaid, although due or accrued, on debts owing to any bank shall not be included in calculation of its profits, unless any bank shall keep its books on a complete accrual basis in which event any such bank shall show on its books accrued interest receivable on notes, bonds, and other investments, unless the same shall be past due as defined by 32-1-452, and shall also carry on its books accrued interest, taxes, and expenses payable.

History: En. Sec. 46, Ch. 89, L. 1927; amd. Sec. 1, Ch. 64, L. 1931; re-en. Sec. 6014.50, R.C.M. 1935; R.C.M. 1947, 5-525.

Cross-References

Conversion of surplus and undivided profits to capital stock, 32-1-340.

32-1-454. Past-due and doubtful paper. Every bank carrying any bad debt or a debt of doubtful value as an asset shall upon the request or demand of the department collect the same or put it in good bankable condition or charge it out of its books.

History: En. Sec. 102, Ch. 89, L. 1927; re-en. Sec. 6014.113, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1029.

Cross-References

U.C.C. — commercial paper, Title 30, ch. 3.

32-1-455. Reserve requirements. (1) A bank, except a reserve bank, shall maintain at all times a reserve of that percentage of its deposit liabilities as shall be determined by the department as provided in this section, of which reserve a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks.

(2) The department may establish, raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in its judgment banking conditions may justify. The power to establish, raise, or lower reserves is limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system and not less than 75% of those reserve requirements for members of the federal reserve system.

(3) A bank approved by the department as a reserve bank must at all times maintain a reserve of the percentage or percentages as the department shall determine from time to time, which shall not be less than the percentages specified in this section of its deposit liabilities, of which a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks.

(4) A solvent bank of good repute having a full paid-up capital and surplus of $300,000, doing business in this state or any other state, may be designated by the department as a reserve agent for Montana banking institutions. The approval or designation may be withdrawn or withheld at any time by the department for cause.

(5) It shall be the duty of any bank whose reserve shall drop below the legal requirements to report the matter to the department immediately and as often thereafter as the department shall ask for said report.

(6) When the reserve of a bank falls below the amount required by this section, the bank may not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the department shall notify a bank whose reserve may be below the amount required to make good the reserve.

(7) In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried.

(8) However, a compliance by member banks with the federal reserve banking laws, rules, and regulations shall be held to be a compliance with the reserve requirements and conditions of this chapter and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this chapter.

History: (1) thru (4), (6) thru (8)En. Sec. 53, Ch. 89, L. 1927; re-en. Sec. 6014.57, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1967; amd. Sec. 18, Ch. 431, L. 1975; Sec. 5-532, R.C.M. 1947; (5)En. Sec. 103, Ch. 89, L. 1927; re-en. Sec. 6014.114, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; Sec. 5-1030, R.C.M. 1947; R.C.M. 1947, 5-532, 5-1030.

Cross-References

Examination and supervision by department, 32-1-211.

Banks may join federal reserve bank, 32-1-373.

32-1-456 through 32-1-460 reserved.

32-1-461. Bonding of employees. (1) The board of directors of every bank shall require that all officers and employees of banks whose duty includes the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers be bonded.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Such action as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds shall be in such form as is provided or approved by the department.

(3) The bonds shall be approved by the president of the bank and his action reported to the board of directors.

(4) All bonds required by this section shall be kept in the custody of the bank subject to inspection by examiners from the department; provided, as far as possible, they may not be placed in the custody of the officer or employee for whom the same is given.

History: En. Sec. 105, Ch. 89, L. 1927; amd. Sec. 3, Ch. 145, L. 1931; re-en. Sec. 6014.116, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; amd. Sec. 21, Ch. 71, L. 1977; R.C.M. 1947, 5-1032.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Examination and supervision by department, 32-1-211.

Selection of officers and employees — meetings and minutes, 32-1-325.

32-1-462. Persons previously convicted under banking laws — bank employment. It shall be unlawful for anyone having been convicted of the violations of the banking laws of any state or nation to accept employment in a bank in this state without first stating said facts to the directors of said bank. No such person shall be employed in any bank without the approval of the department, granted in writing after a full consideration of the facts.

History: En. Sec. 120, Ch. 89, L. 1927; re-en. Sec. 6014.130, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1046.

Cross-References

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Rules adopted by board — new banks, 32-1-203.

Examination and supervision by department, 32-1-211.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Selection of officers and employees — meetings and minutes, 32-1-325.

Violation of notice or final order — penalties, 32-1-921.

32-1-463. Sale of securities by officer to bank. (1) No director, officer, employee, or controlling stockholder of any bank shall, directly or indirectly, for his own account, for himself, or as the partner or agent of others sell or transfer or cause to be sold or transferred to the bank of which he is a director, officer, employee, or controlling stockholder any note or bond secured by any mortgage or trust deed on real estate or any contract arising from the sale of real estate, in which such director, officer, employee, or controlling stockholder is personally or financially interested, without a vote of the majority of the board of such bank, duly noted upon the minutes of the meeting at which such transaction is decided upon, which minutes shall be signed by a majority of the board.

(2) Any director, officer, employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision shall be guilty of a felony.

History: En. Sec. 37, Ch. 89, L. 1927; re-en. Sec. 6014.41, R.C.M. 1935; R.C.M. 1947, 5-516.

Cross-References

Selection of officers and employees — meetings and minutes, 32-1-325.

Felony charges — suspension or prohibition, 32-1-908.

32-1-464. Fraud by director, officer, or employee. A director, officer, agent, or employee of a bank is guilty of a felony if that person:

(1) knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or to cause or direct to be made a full and true entry of it in its books and account; or

(b) concurs in omitting to make any material entry thereof;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that corporation as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department.

History: En. Sec. 40, Ch. 89, L. 1927; re-en. Sec. 6014.44, R.C.M. 1935; amd. Sec. 16, Ch. 431, L. 1975; amd. Sec. 8, Ch. 71, L. 1977; R.C.M. 1947, 5-519; amd. Sec. 2, Ch. 36, L. 1979.

Cross-References

Kinds of fraud, 28-2-404.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Examination and supervision by Department, 32-1-211.

Special reports to department, 32-1-233.

False statements and entries considered felony, 32-1-236.

Selection of officers and employees — meetings and minutes, 32-1-325.

Deposits in insolvent bank, 32-1-504.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

Felony charges — suspension or prohibition, 32-1-908.

Criminal law — "knowingly" defined, 45-2-101.

Felony defined, 45-2-101.

Felony — no penalty specified, 46-18-213.

32-1-465. Overdraft by officer or employee — receiving personal profit from loan. An officer, director, agent, teller, clerk, or employee of a bank is guilty of a misdemeanor if that person:

(1) knowingly overdraws his account with such bank and thereby obtains the money, notes, or funds of any such bank; or

(2) asks or receives or consents or agrees to receive any commission, premium on insurance, emolument, gratuity, reward, money, property, or thing of value for his own personal benefit or personal advantage for procuring or endeavoring to procure for any person, firm, or corporation any loan from or the purchase or discount of any paper, note, draft, check, or bill of exchange by such bank or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank.

History: En. Sec. 41, Ch. 89, L. 1927; re-en. Sec. 6014.45, R.C.M. 1935; R.C.M. 1947, 5-520; amd. Sec. 3, Ch. 36, L. 1979.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Theft, 45-6-301.

Issuing a bad check, 45-6-316.

Misdemeanor — when no penalty specified, 46-18-212.

32-1-466. Purchase of obligation of bank by officer. No director, officer, agent, or other employee of any bank shall, directly or indirectly, for his own personal benefit, purchase or sell or be interested in the purchase or sale of any obligation of said bank or of any of the assets of said bank for a sum less than shall appear upon the face of the obligation or obligations so purchased or sold. Every person violating the provisions of this section shall, in addition to the general penalties of this chapter, forfeit to the state twice the nominal amount or face value of such obligations or assets so purchased or sold.

History: En. Sec. 43, Ch. 89, L. 1927; re-en. Sec. 6014.47, R.C.M. 1935; R.C.M. 1947, 5-522.

Cross-References

Punishment, 32-1-110.

Purchase or loan of own capital stock prohibited, 32-1-335.

32-1-467. Loans to managing officer or director. No bank shall make a loan to any managing officer of such bank without taking good collateral or other ample and specific security therefor. When such loan or a loan made to a director of such bank, banking institution, or trust company exceeds in amount 10% of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution, or trust company, which approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto and be and remain a permanent record of such bank.

History: En. Sec. 45, Ch. 89, L. 1927; re-en. Sec. 6014.49, R.C.M. 1935; R.C.M. 1947, 5-524.

Cross-References

Loan of money — what constitutes, 31-1-101.

Deceptive practices, 45-6-317.

32-1-468. Removal of directors, officers, or employees. Any director, officer, or employee of any bank found by the department, after examination, to be negligent, dishonest, reckless, or incompetent shall be removed from office by the board of directors of such bank on the written order of the department, and if the directors neglect or refuse to remove such director, officer, or employee, in event any losses accrue to such bank thereafter by reason of the negligence, dishonesty, recklessness, or incompetency of such director, officer, or employee, such written order of the department shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them, or any of them, by a depositor or creditor for recovery of such losses.

History: En. Sec. 109, Ch. 89, L. 1927; re-en. Sec. 6014.120, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1036.

Cross-References

Negligence, 27-1-701, 27-1-702.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

32-1-469 and 32-1-470 reserved.

32-1-471. Penalty for unlawful hypothecation of property received. Any officer or employee of any bank doing business in this state who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into his hands or into the possession of the bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, is guilty of theft and upon conviction thereof shall be punished as for other felonies.

History: En. Sec. 113, Ch. 89, L. 1927; re-en. Sec. 6014.124, R.C.M. 1935; amd. Sec. 42, Ch. 359, L. 1977; R.C.M. 1947, 5-1040.

Cross-References

Theft, 45-6-301.

Felony — no penalty specified, 46-18-213.

32-1-472. Concealing actions from directors. Any officer or employee of any bank who intentionally conceals from the directors of such corporation, or committee thereof where the directors have delegated authority to a committee to pass on loans and discounts, any discount or loan made by and in behalf of the corporation or from its assets between the regular meetings of its board of directors or committee, the purchase of any security, the sale of any of its securities, or any guarantee, repurchase agreement, or any other agreement whereby the corporation is obligated, during the same period, is guilty of a misdemeanor and on conviction must be imprisoned in the county jail for not more than 12 months for each offense and may also be fined not more than $500, at the discretion of the court.

History: En. Sec. 114, Ch. 89, L. 1927; re-en. Sec. 6014.125, R.C.M. 1935; R.C.M. 1947, 5-1041.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-1-473. Theft of bank funds by officers or employees. Any banker, officer, director, or employee of any bank who fraudulently appropriates or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust, or issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent in any case to injure or defraud the bank or any person or corporation or to deceive any officer of the bank or any other person or anyone appointed to examine the affairs of the bank or any person who with like intent, aids or abets any officer, clerk, or employee in the violation of this section is guilty of theft and upon conviction thereof shall be imprisoned in the state prison for a period of not exceeding 20 years or be fined an amount not exceeding $50,000, or both.

History: En. Sec. 117, Ch. 89, L. 1927; re-en. Sec. 6014.128, R.C.M. 1935; amd. Sec. 43, Ch. 359, L. 1977; R.C.M. 1947, 5-1044; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

"Felony" defined, 45-2-101.

Theft, 45-6-301.

32-1-474. False statement to obtain loan. Whoever shall make any statement, knowing it to be false, for the purpose of obtaining for himself or for any other person, firm, corporation, or association a loan of money from any bank or for the purpose of gaining an extension of time of payment of any debt due such bank shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 1 year, or both.

History: En. Sec. 118, Ch. 89, L. 1927; re-en. Sec. 6014.129, R.C.M. 1935; R.C.M. 1947, 5-1045.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

"Misdemeanor" defined, 45-2-101.

Deceptive practices, 45-6-317.

32-1-475 through 32-1-480 reserved.

32-1-481. Bank holidays. In addition to emergency closings authorized by 32-1-561 through 32-1-565, a bank in the state of Montana may remain closed and refrain from doing business on those legal holidays designated in 1-1-216.

History: En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part); amd. Sec. 1, Ch. 264, L. 1979; amd. Sec. 1, Ch. 435, L. 1983.

32-1-482. Transaction on holidays. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank in this state because done or performed during any time other than regular banking hours or on a legal holiday, provided that nothing shall be construed herein to compel any bank in this state, which by law or custom is entitled to close at 12 noon on any Saturday or for the whole or part of any legal holiday, to keep open for transaction of business or to perform any of the acts or transactions aforesaid on any Saturday after such hour or on any legal holiday except at its option.

History: En. Sec. 115, Ch. 89, L. 1927; re-en. Sec. 4016.126, R.C.M. 1935; R.C.M. 1947, 5-1042.

Cross-References

U.C.C. — bank deposits and collections — time of receipt of items, 30-4-107.

Effect of closing, 32-1-565.

32-1-483. Closing on Saturdays authorized — Saturday treated as holiday. Any bank as defined in 32-1-102 and any national bank or national banking association incorporated or organized under the laws of the United States of America and any federal reserve bank may, at its election, remain closed and refrain from the transaction of any business on Saturdays. Any Saturday on which any such bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act authorized, required, or permitted to be performed on a Saturday at or by or with respect to any bank including any national bank or national banking association and any federal reserve bank may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday or from the nonopening of any bank for the transaction of business on any Saturday under the authority of 32-1-483 through 32-1-485.

History: En. Sec. 1, Ch. 124, L. 1955; amd. Sec. 23, Ch. 71, L. 1977; R.C.M. 1947, 5-1055.

Cross-References
Effect of closing, 32-1-565.

32-1-484. Bylaws regarding banking hours and business days. (1) At any regular or special meeting of its board of directors, any bank, as herein defined, and any national bank or national banking association and any federal reserve bank may, at any time, enact or amend bylaws to provide for its banking hours or business days or to change its banking hours or business days, including remaining closed or closing on any Saturdays.

(2) Any such bank enacting a bylaw or amending any bylaw with respect to such subject matter shall give reasonable notice to the public of the enactment of a new bylaw or amendment of bylaws by:

(a) posting an announcement in the lobby of the bank, incorporating the text of the bylaw or of the amended bylaw and advising of the date the same becomes effective; or

(b) mailing a copy of such notice to each of the bank's customers as of the date of the adoption of such bylaw or amendment; and

(c) in addition to posting or mailing, publishing such notice not less than once in each week for 2 weeks in any newspaper of general circulation in the county wherein such bank has its office.

(3) In any event such notice, whether posted and published or mailed and published, shall be given at least 14 days in advance of the effective date of the bylaw or amended bylaw.

History: En. Sec. 2, Ch. 124, L. 1955; R.C.M. 1947, 5-1056.

Cross-References
Publication of legal notices, Title 18, ch. 7, part 2.
Bylaws, 32-1-308.
Effect of closing, 32-1-565.

32-1-485. Interest payable at bank on Saturday — how paid. Where, by the terms of any note or obligation, interest is payable to a bank on any Saturday upon which a bank is closed pursuant to the authority of 32-1-483 through 32-1-485, interest payable to such bank on any such Saturday may be paid in the amount due on such Saturday on the next succeeding business day with the same effect as if paid to such bank on such Saturday.

History: En. Sec. 3, Ch. 124, L. 1955; R.C.M. 1947, 5-1057.

Cross-References
Interest on deposits of public funds — conformity with federal law, 17-6-104.
U.C.C. — bank deposits and collections — time of receipt of items, 30-4-107.
Loan presumed to be on interest, 31-1-103.
Interest defined, 31-1-104.

32-1-486 through 32-1-490 reserved.

32-1-491. Destruction of bank records. (1) Banks are required to preserve or keep their records of customer accounts for at least 8 years next after January 1 of the year following the time of the making of such records; provided, however, that records showing unpaid balances in favor of depositors of any banks shall not be destroyed. No liability shall accrue against any bank destroying any such records (except records the destruction of which is forbidden hereby) after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for bank records other than those records listed in subsection (1).

History: En. Sec. 1, Ch. 77, L. 1951; R.C.M. 1947, 5-1050; amd. Sec. 1, Ch. 314, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Examination and supervision by Department, 32-1-211.

Department to make rules, 32-1-218.

32-1-492. Reproduction of bank records — admissibility in evidence. (1) Banks are hereby authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, and to preserve, store, use, and employ the same in carrying on business.

(2) In any action or proceedings in which any bank records may be called in question or be demanded of any bank or any officer or employee thereof, a showing that such records have been destroyed in the regular course of business shall be a sufficient excuse for the failure to produce them.

(3) Upon such showing, secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions thereof (and photographic enlargements and prints of microfilm reproductions), when made in the regular course of business, shall be admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter) made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda which were in existence on July 1, 1951, shall be admissible in evidence in proof of the form, text, and content of any said originals which may be destroyed in the regular course of business after July 1, 1951.

History: En. Sec. 2, Ch. 77, L. 1951; R.C.M. 1947, 5-1051.

Cross-References

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or board prima facie evidence, 26-1-606.

Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).

Records of electronic funds transfers, 32-6-301.

32-1-493. Admissibility of copies in evidence — exception when original available. Any photostatic or photographic or microfilm reproductions (including enlargements of the latter) of any original records or files of any bank, whether in the form of an entry or entries in a book or any other form of record, shall be admissible in evidence in any court of competent jurisdiction in proof of an act, transaction, occurrence, or event when shown to be made in the regular course of business of the bank. But nothing contained in 32-1-491 through 32-1-495 shall be construed to authorize the use of secondary evidence in administrative or court proceedings when original records are in existence and available for use in accord with the rules of evidence.

History: En. Sec. 3, Ch. 77, L. 1951; R.C.M. 1947, 5-1052.

Cross-References

Admissibility of duplicates, copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Records of electronic funds transfers, 32-6-301.

32-1-494. Destruction or reproduction "in regular course of business" defined. Destruction in the regular course of business shall include destruction at any time after making such reproductions. Reproductions made in the regular course of business shall include reproductions made at any time prior to the destruction of the original, in each case, if done in good faith and without intent to defraud.

History: En. Sec. 4, Ch. 77, L. 1951; R.C.M. 1947, 5-1053.

Cross-References

U.C.C. — "good faith" defined, 30-1-201.

32-1-495. Application. The provisions of 32-1-491 through 32-1-495 shall be applicable to all records in existence on February 23, 1951, and to all records originating after said date and shall apply to all banks organized under the laws of the state of Montana and also to all national banks located in the state of Montana, as far as applicable to such national banks.

History: En. Sec. 5, Ch. 77, L. 1951; R.C.M. 1947, 5-1054.

Cross-References

Change from state to national bank, 32-1-361.

National bank powers extended to state banks, 32-1-362.

Certificate of change to national bank, 32-1-365.

Reorganization of national bank as state bank, 32-1-374.

Part 5

Dissolution, Closing, and Liquidation

Part Cross-References

Receivers, Title 27, ch. 20.

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

32-1-501. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, and investment companies may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank or trust company may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank or trust company desiring to voluntarily liquidate shall apply to the department for permission to so liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution. The board of directors of a bank whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling.

History: En. Sec. 20, Ch. 89, L. 1927; amd. Sec. 2, Ch. 145, L. 1931; amd. Sec. 1, Ch. 10, L. 1935; re-en. Sec. 6014.24, R.C.M. 1935; amd. Sec. 10, Ch. 431, L. 1975; R.C.M. 1947, 5-301.

Cross-References

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

32-1-502. Grounds for closing bank. (1) When it appears to the department that:

(a) a bank has willfully violated its charter or a law of this state;

(b) a bank has willfully violated a general rule of the department, made in accordance with law;

(c) the capital of a bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or, without that notice, in the event a majority of the board of directors of the bank notifies the department in writing that the impairment cannot be made good;

(d) a bank cannot meet or has failed to meet its liabilities as they become due in the regular course of business;

(e) a bank's reserve has fallen below the amount required by law and it has failed to make good that reserve within 30 days after being requested to do so by the department or, without that notice, if a majority of the directors, in writing, notifies the department that the reserve cannot be made good within 30 days or if it is continually allowing its reserve to fall below the required amount;

(f) a bank is conducting business in an unsafe and unauthorized manner or is in an unsafe or unsound condition;

(g) a bank refused to submit its papers, books, and concerns to the inspection of the department; or

(h) an officer of a bank has refused to be examined under oath regarding the affairs, business, or concerns of any bank insofar as they relate to solvency or matters having to do with the supervision by the department; then the department may, in its discretion, close the bank and take possession of all the books, records, assets, and business of every description of the bank and hold them and retain possession of them until the bank is authorized by the department to resume business or its affairs are liquidated as provided in this chapter, and it shall do so in cases where a bank comes into its possession voluntarily or in the manner provided by law.

(2) The powers and authority conferred on the department by this section, except in cases of voluntary surrender, are discretionary and not mandatory. As long as the department acts in good faith, the department and its

employees and agents may not be held liable civilly or criminally or upon their official bonds for action taken under this section or for any failure to act under it.

History: En. Sec. 121, Ch. 89, L. 1927; re-en. Sec. 6014.131, R.C.M. 1935; amd. Sec. 43, Ch. 431, L. 1975; R.C.M. 1947, 5-1101.

Cross-References

Extent of surety's liability, 28-11-411.

Examination and supervision by Department, 32-1-211.

Department to make rules, 32-1-218.

Reserve requirements, 32-1-455.

Fraud by director, officer, or employee, 32-1-464.

32-1-503. Bank insolvent when. A bank is insolvent within the meaning of this chapter when all of its capital, surplus, and undivided profits are absorbed in losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and engagements.

History: En. Sec. 88, Ch. 89, L. 1927; re-en. Sec. 6014.99, R.C.M. 1935; R.C.M. 1947, 5-1015.

Cross-References

Insolvency — what constitutes, 31-2-202.

32-1-504. Deposits in insolvent bank. (1) Except as otherwise provided by the Uniform Commercial Code, whenever any bank shall be insolvent in the manner described and set forth in this chapter, such bank shall not accept or receive on deposit any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency separate and apart from the general assets of the bank from and after the date of the accrual of such insolvency. When such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the department.

(2) In the event such insolvency be not made good, then any and all such trust deposits shall be returned to the depositors making them.

(3) Any officer, director, cashier, manager, member, partner, or managing partner thereof who shall knowingly accept or receive, be accessory to, or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or imprisonment in the state prison not exceeding 5 years or by both fine and imprisonment.

History: En. Sec. 70, Ch. 89, L. 1927; re-en. Sec. 6014.74, R.C.M. 1935; amd. Sec. 11-102, Ch. 264, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-803.

Cross-References

"Money" defined, 30-1-201.

U.C.C. — bank deposits and collections — insolvency and preference, 30-4-214.

U.C.C. — insolvency of bank holding funds for documentary credit, 30-5-117.

Investments of financial institutions, 32-1-424.

Fraud by director, officer, or employee, 32-1-464.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

32-1-505. Penalty for receiving deposits when insolvent or for making false statements. (1) Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts circulating as money or currency, except in the manner set forth in 32-1-504; subscribes or makes any false statements or entries in the books of such bank; knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such bank; or willfully subscribes or makes false reports is subject to imprisonment in the state prison for a term not exceeding 5 years, a fine not exceeding $50,000, or both.

(2) Any person or the members of any partnership or banking association who willfully or knowingly receive deposits, money, or commercial papers circulating as money, when such person, partnership, or banking association is insolvent, or who subscribe or make any false statement or entries in the books of any such bank or who knowingly subscribe or exhibit any false papers with the intention of deceiving any person authorized to examine the condition of any bank provided for in this chapter or who willfully subscribe or make false reports to the department shall be guilty of a felony and shall be punishable by imprisonment in the state prison for a term not exceeding 5 years, by a fine not exceeding $50,000, or by both such fine and imprisonment.

History: (1)En. Sec. 69, Ch. 89, L. 1927; re-en. Sec. 6014.73, R.C.M. 1935; amd. Sec. 16, Ch. 71, L. 1977; Sec. 5-802, R.C.M. 1947; (2)En. Sec. 87, Ch. 89, L. 1927; re-en. Sec. 6014.98, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; Sec. 5-1014, R.C.M. 1947; R.C.M. 1947, 5-802, 5-1014; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Punishment, 32-1-110.

False statements and entries considered felony, 32-1-236.

Fraud by director, officer, or employee, 32-1-464.

"Felony" defined, 45-2-101.

Unsworn falsification to authorities, 45-7-203.

32-1-506. Assessment on capital stock to make good impairment. (1) When the department determines that an impairment of capital exists in a bank, it may, in its discretion, notify the board of directors of the bank by written notice that the impairment exists, stating the amount thereof in dollars and percentage of the capital stock, and it may, in its discretion, order the board to make good the impairment within 90 days from date of the notice.

(2) The board of directors shall, upon receipt of notice, convene and pass a resolution reciting the receipt of the notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders at the meeting shall pass a resolution reciting the facts of receipt of notice from the department, notice of impairment, and notice of meeting and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the department as provided in notice of impairment.

(4) If there is any stock remaining on which the assessment is not paid as provided in this section, it or a part of it as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary of the bank, at public or private sale, as appears best for all concerned, not less than 30 days after the day fixed for payment of assessment. Notice of the

time and place of the sale shall be given by certified or registered mail to the stockholders by the board through its cashier or secretary at least 10 days prior to the sale. A sale of stock as provided in this section causes an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold and makes them void in the hands of the stockholder or his assigns or pledgees. A new certificate shall be issued by the bank to the purchaser for the number of shares purchased and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee of the stock for the remaining shares, if any. The record of the original certificate sold shall be marked canceled on the books of the bank, and that record is prima facie evidence of the regularity of the proceedings for the sale of the stock.

(5) If a bank fails to make good its capital impairment upon demand of the department, as provided in this section, the department may immediately take charge of that bank and proceed to liquidate it as in case of insolvency.

(6) If the stock does not sell for enough to pay the assessment on it, the board of directors may sue in the name of the corporation to collect the deficiency from the stockholder of record whose stock has been sold for the assessment.

History: En. Sec. 68, Ch. 89, L. 1927; re-en. Sec. 6014.72, R.C.M. 1935; amd. Sec. 29, Ch. 431, L. 1975; R.C.M. 1947, 5-801; amd. Sec. 4, Ch. 36, L. 1979.

Cross-References

Reports to Department of Commerce, 32-1-231.

Special reports to department, 32-1-233.

Stockholders' liability — effect of insolvency on transfers of stock, 32-1-333.

Purchase or loan of own capital stock prohibited, 32-1-335.

Increase or diminution of capital stock, 32-1-351.

32-1-507. Power of closed banks to borrow money from governmental agencies. After applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, and notwithstanding any other law, the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks, trust companies, and investment companies closed and in liquidation. As security for the loan the liquidating agent may pledge or mortgage the assets and properties thereof for the purpose of paying depositors or creditors in part or in full.

History: En. Sec. 1, Ch. 3, Ex. L. 1933; re-en. Sec. 6015.1, R.C.M. 1935; amd. Sec. 62, Ch. 431, L. 1975; amd. Sec. 26, Ch. 71, L. 1977; R.C.M. 1947, 5-1126.

Cross-References

Closed banking institutions empowered to borrow from the corporation, 32-1-606.

32-1-508. Corporate existence — ceases when. The charters and the corporate existence of banks shall cease automatically and become nonexistent upon the completion of liquidation of the affairs of said bank, whether accomplished voluntarily or through legal process. For the purposes of this section, a bank's affairs shall be considered liquidated and completed when all of its property of every kind has been sold or applied toward the payment of its obligations and the corporation is left without property in existence or in reasonable expectancy.

History: **En. Sec. 106, Ch. 89, L. 1927; re-en. Sec. 6014.117, R.C.M. 1935; R.C.M. 1947, 5-1033.**

32-1-509. Taxes on banks which have ceased to do business. Whenever any bank ceases to do business as a bank, no taxes shall be levied or collected in accordance with the laws governing the assessment of banks but its property shall be assessed in accordance with the laws governing the assessment of similar property of private corporations.

History: **En. Sec. 95, Ch. 89, L. 1927; re-en. Sec. 6014.106, R.C.M. 1935; R.C.M. 1947, 5-1022.**

Cross-References

Taxation — return and payment on corporate dissolution, 15-31-143.

Taxation — banks and savings and loan associations, Title 15, ch. 31, part 7.

Business corporations — state tax clearance certificate, 35-1-944.

32-1-510. Penalty for maliciously declaring bank insolvent. If, as a result of malice or for personal gain, an employee or agent of the department declares a bank insolvent, he is subject to a fine not exceeding $1,000 or imprisonment in the county jail not exceeding 1 year, or both, and shall forfeit his office.

History: **En. Sec. 122, Ch. 89, L. 1927; re-en. Sec. 6014.132, R.C.M. 1935; amd. Sec. 44, Ch. 431, L. 1975; R.C.M. 1947, 5-1102.**

Cross-References

Rules of conduct for state officers and state employees, 2-2-121.

Punishment, 32-1-110.

Examination and supervision by department, 32-1-211.

Confidentiality — penalties, 32-1-234.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-1-511. Bank may be placed in department's possession. A bank may place its affairs and assets under the control and in the possession of the department by posting a notice on the front door of the bank indicating that it is in the possession of the department. The notice shall be signed by a majority of the directors in office of the bank. Immediately upon the posting of the notice by a bank, it shall notify the department of its action.

History: **En. Sec. 123, Ch. 89, L. 1927; re-en. Sec. 6014.133, R.C.M. 1935; amd. Sec. 45, Ch. 431, L. 1975; R.C.M. 1947, 5-1103.**

Cross-References

Examination and supervision by department, 32-1-211.

32-1-512. Effect of posting notice. The posting of the notice by the directors of a bank or of a like notice by the department is sufficient to place all assets and property of the bank, of whatever nature and wherever located, in possession of the department and operates as a bar to an attachment or other legal proceedings against the bank or its assets. No valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of the bank after the posting of the notice or after taking possession of a bank by the department without its consent.

History: En. Sec. 124, Ch. 89, L. 1927; re-en. Sec. 6014.134, R.C.M. 1935; amd. Sec. 46, Ch. 431, L. 1975; R.C.M. 1947, 5-1104.

Cross-References

Receivers, Title 27, ch. 20.

Attachments prohibited, 32-1-111.

Liens — general provisions, Title 71, ch. 3, part 1.

32-1-513. Taking possession of bank — notice. On taking possession of the assets and business of the bank, the department shall, in addition to posting notice on the front door of the bank, also notify at once, personally or by wire, all corresponding banks and all persons or corporations known to it to be in possession of any of the estate of the bank.

History: En. Sec. 125, Ch. 89, L. 1927; re-en. Sec. 6014.135, R.C.M. 1935; amd. Sec. 47, Ch. 431, L. 1975; R.C.M. 1947, 5-1105.

Cross-References

Notice — actual and constructive, 1-1-217.

Examination and supervision by Department, 32-1-211.

32-1-514. Resumption after closing. After the department has taken possession of a bank, it may permit that bank to resume business upon conditions which may be approved by the department.

History: En. Sec. 126, Ch. 89, L. 1927; re-en. Sec. 6014.136, R.C.M. 1935; amd. Sec. 48, Ch. 431, L. 1975; amd. Sec. 24, Ch. 71, L. 1977; R.C.M. 1947, 5-1106.

Cross-References

Examination and supervision by department, 32-1-211.

Reserve requirements, 32-1-455.

32-1-515. Powers of department on closing bank — court proceedings. (1) Upon taking the assets and business of a bank into its possession, the department is authorized to collect all moneys due to that bank and to do those other acts necessary to conserve its assets and business and the department shall proceed to liquidate the affairs of the bank.

(2) The department may, in its discretion and except as otherwise limited by the terms of this chapter, do any acts necessary or desirable for the protection of the property and assets of the bank and the speedy and economical liquidation of the assets and affairs of the bank and the payment of its creditors or for the reopening and resumption of business where that is practicable or desirable.

(3) It may institute, in its own name or in the name of the bank, those suits and other legal proceedings as it considers expedient for those purposes.

(4) (a) By applying to the district court of the county in which the bank is located or to the judge of that court in chambers, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets, which sale may be made to stockholders, officers, directors, or others interested in the bank, on consent of the court.

(b) In the court proceedings the bank shall be made a party by notice issued on order of the court or judge, in place of summons, and served upon some officer of the bank, if there is any in the county. If no officer can be found in the county, then the notice shall be posted in three public places in the county for at least 10 days before the day of hearing.

(c) The hearing of an application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the bank has had 5 days' notice of the application or the notice has been posted for at least 10 days.

History: **En. Sec. 127, Ch. 89, L. 1927; re-en. Sec. 6014.137, R.C.M. 1935; amd. Sec. 49, Ch. 431, L. 1975; R.C.M. 1947, 5-1107.**

Cross-References

Notice — actual and constructive, 1-1-217.

Parties — joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Powers and duties of State Banking Board, 32-1-202.

Examination and supervision by Department, 32-1-211.

32-1-516. Recourse of aggrieved bank — injunction. (1) A bank aggrieved by the action of the department in taking possession of its assets or closing its doors may, within 10 days after possession has been taken, apply to the district court of the county in which its principal place of business is located, or to the judge of that court in chambers, to enjoin further proceedings by the department.

(2) The court or the judge in chambers, after notifying the department to appear at a specified time and place to show cause why further proceedings should not be enjoined and after hearing the allegations and proofs of the parties and determining facts, may on the merits dismiss the application or enjoin the department from further proceeding and direct it to surrender the business and assets of the bank.

(3) The application for injunction may be heard at any time after 5 days' notice from the time of service on the department, in the discretion of the court, or at any time prior to then by the consent of the department.

(4) Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of the complaint shall be served on the department with the order to show cause.

(5) The department shall, at least 2 days before the time set for hearing, file with the court and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. Any questions raised by motion in other actions may be raised in the answer.

(6) On the issues raised by the complaint and answer, the court or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties and shall enter judgment, as in the trial of other civil actions.

(7) If the department makes no appearance in the time allowed, the court shall enter its default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances and enter judgment accordingly. The judgment entered either after hearing on the merits or by default is a final judgment.

(8) During the pendency of litigation the department shall take that action in relation to the assets of the bank which is necessary to conserve them.

History: **En. Sec. 128, Ch. 89, L. 1927; re-en. Sec. 6014.138, R.C.M. 1935; amd. Sec. 50, Ch. 431, L. 1975; R.C.M. 1947, 5-1108.**

Cross-References

Pleadings, Rule 7(a), M.R.Civ.P. (see Title 25, ch. 20).

Form of pleadings, Rule 10, M.R.Civ.P. (see Title 25, ch. 20).

Judgment, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

32-1-517. Department may retain bank employees — liquidating agent's salary and expenses. (1) The department may retain those officers or employees of the bank which it considers necessary. It shall require from the agent appointed by it and from those assistants who have charge of any of the assets of the bank that security for the faithful discharge of their duties as it considers proper.

(2) The salary of a liquidating agent and necessary clerical assistance and other expenses incurred by a liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under the agent's charge in proportion to the total amount of resources of each of the banks. The funds for those expenses shall be raised by assessing each bank in ratio herein set forth and paying those expenses direct to the persons entitled to them, without depositing any of the funds in the state treasury.

History: En. Sec. 129, Ch. 89, L. 1927; re-en. Sec. 6014.139, R.C.M. 1935; amd. Sec. 51, Ch. 431, L. 1975; R.C.M. 1947, 5-1109.

Cross-References

Agency, Title 28, ch. 10.

Selection of officers and employees — minutes and meetings, 32-1-325.

Bonding of employees, 32-1-461.

32-1-518. Compensation of agents and attorneys. The compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a bank whose assets and business have been taken possession of by the department shall be fixed by the department, but subject to approval by the judge of the district court of the county in which the bank is located, on notice of the bank. The department shall, upon written request of the district judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants shall be fixed and approved before services are rendered. When the compensation has been fixed and approved and the services rendered, the compensation shall be paid out of the funds of the bank in the hands of the department and are a proper charge and lien on the assets of the bank.

History: En. Sec. 130, Ch. 89, L. 1927; re-en. Sec. 6014.140, R.C.M. 1935; amd. Sec. 52, Ch. 431, L. 1975; R.C.M. 1947, 5-1110.

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

Agency, Title 28, ch. 10.

Liens generally, Title 71, ch. 3, part 1.

32-1-519 through 32-1-530 reserved.

32-1-531. Notice to creditors of insolvent bank. The department shall give notice by advertisement in a newspaper of general circulation in the town or city in which the bank is situated, if there is one, and, if not, then in some other newspaper published in this state, which the department shall designate, once a week for 2 successive weeks. The notice shall call on all persons who have claims against the bank to present them to the department or its authorized agent at a place to be specified in the notice and to make sworn proof, in form to be fixed by the department, within the time specified in the notice, not less than 90 days from the date of the first publication. A copy of the notice shall be mailed to all persons whose names appear as creditors upon the books of the bank.

History: En. Sec. 131, Ch. 89, L. 1927; re-en. Sec. 6014.141, R.C.M. 1935; amd. Sec. 53, Ch. 431, L. 1975; R.C.M. 1947, 5-1111.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Assignments for benefit of creditors — notice to creditors to present claims, 31-2-221.

32-1-532. Claims — allowance and rejection. (1) The department shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by certified or registered mail and an affidavit of the service of the notice, which shall be prima facie evidence of service, shall be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county where the bank is located within 90 days after the service to fix the amount of the claim and its order of priority or either. An appeal from the department's allowance, either as to priority or amount, may also be taken to the district court of that county by any party in interest by serving notice on the department, stating the grounds of objection and filing it in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

History: En. Sec. 132, Ch. 89, L. 1927; re-en. Sec. 6014.142, R.C.M. 1935; amd. Sec. 54, Ch. 431, L. 1975; R.C.M. 1947, 5-1112.

Cross-References

Proof of service, Rule 4D(8), M.R.Civ.P. (see Title 25, ch. 20).

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

U.C.C. — secured transactions — persons who take priority over unperfected security interests — "lien creditor", 30-9-301.

32-1-533. Payment of claims. (1) Claims presented to the department prior to the expiration of the time fixed in the notice to creditors and allowed by it shall be paid in the order of priority fixed in this chapter.

(2) Those filed after that expiration and within 1 year of that expiration are entitled, after they have been allowed by the department, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the department and available for the payment of

claims of their order of priority at the time the claims are filed. As against other claims of the same order of priority on which dividends have been paid, they are entitled to payment in a proportionate amount before further payments are made on those other claims.

(3) All claims filed after the expiration of 1 year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind, except claims of shareholders based on stock or assessments paid on stock, have been fully paid and a surplus remains in the hands of the department and then only from that surplus.

History: En. Sec. 133, Ch. 89, L. 1927; re-en. Sec. 6014.143, R.C.M. 1935; amd. Sec. 55, Ch. 431, L. 1975; R.C.M. 1947, 5-1113.

Cross-References

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

Stockholders' liability — effect of insolvency on transfers of stock, 32-1-333.

32-1-534. Claims — order of payment — priorities. (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department shall be as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors, holders of cashier's checks, certified checks, contractual liabilities, and drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, shall be considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) of this section without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) of this section or in preference to the payment of any claims of creditors within these subsections, pay off and discharge any lien, claim, or charge against the assets or property of the bank in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property and

likewise property on which the bank has liens by mortgage or otherwise. It may also, in its discretion, create a fund or retain in its hands, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), money for those purposes.

(3) Collateral that has been put up or pledged as security for the payment of bills payable by a bank or loans or discounts that have been outstanding as rediscounts of a bank prior to the closing of it is not available to the other creditors of the bank in whole or in part until the bills payable or rediscounts have been retired, after which offsets as provided in this section shall be allowed.

(4) Deposits of a person, firm, or corporation in a bank which is in the possession of the department may be offset against any indebtedness (subject to the conditions of subsection (3) of this section), except assessments on stock, due to the bank from that person, firm, or corporation. All dividends when declared in favor of a creditor of the bank may be applied, in the discretion of the department, in satisfaction of the indebtedness, if any, due the bank from the creditor.

History: En. Sec. 134, Ch. 89, L. 1927; amd. Sec. 4, Ch. 145, L. 1931; re-en. Sec. 6014.144, R.C.M. 1935; amd. Sec. 11-104, Ch. 264, L. 1963; amd. Sec. 56, Ch. 431, L. 1975; R.C.M. 1947, 5-1114; amd. Sec. 5, Ch. 36, L. 1979.

Cross-References

Security for deposits of public funds, 17-6-103.

Powers of receiver, 27-20-302.

U.C.C. — bank deposits and collections — insolvency and preference, 30-4-214.

U.C.C. — letters of credit — insolvency of bank holding funds for documentary credit, 30-5-117.

U.C.C. — secured transactions — persons who take priority over unperfected security interests — "lien creditor", 30-9-301.

Certified checks, 32-1-441.

Giving security for deposit prohibited — exceptions, 32-1-447.

32-1-535. Claims — partial payments — assignments. (1) The department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. It may, in its discretion and if under the circumstances of the particular case it considers it expedient and safe, at any time after taking possession of the bank and prior to the expiration of the period fixed for filing of claims, if it has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled to distribution, in the order of priority fixed in this chapter, making that payment to the creditors as they appear on the books and records of the bank and determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the bank and from time to time thereafter when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of the bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more may be

paid that creditor until the payment made other creditors places them on equal footing.

(3) In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon the disputed claims or deposits shall be held by the department until the validity of those claims or deposits has been finally determined.

(4) Claims against a bank in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding upon the department only after they have been filed and allowed by the department and are subject to the payment of the assignor's liabilities to the bank. An assignment shall be made by filing written notice, signed by the original claimant, with the department or person in charge of the bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against a bank closed or taken possession of by the department, whether issued before or after closing, may not be recognized as a claim against the bank or as an assignment of any amount, whether protested or not protested.

History: En. Sec. 135, Ch. 89, L. 1927; re-en. Sec. 6014.145, R.C.M. 1935; amd. Sec. 5, Ch. 145, L. 1931; amd. Sec. 57, Ch. 431, L. 1975; amd. Sec. 25, Ch. 71, L. 1977; R.C.M. 1947, 5-1115.

Cross-References

Powers of receivers, 27-20-302.

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

Escheat, 70-1-203.

Property held by court or public officer or agency, 70-9-207.

32-1-536. Deposit of funds in department's hands. All funds in the hands of the department belonging to a bank in process of liquidation shall be deposited in the department's name in those banks within the state which may be selected and designated by it and subject to its checks. Those funds are to be preferred and protected as provided in this chapter.

History: En. Sec. 136, Ch. 89, L. 1927; re-en. Sec. 6014.146, R.C.M. 1935; amd. Sec. 58, Ch. 431, L. 1975; R.C.M. 1947, 5-1116.

Cross-References

Investments of financial institutions, 32-1-424.

32-1-537. Disposition of unclaimed funds. (1) The department shall certify to the state treasurer a complete list of funds remaining with it uncalled for, which have been left with it in its official capacity, in trust for depositors in and creditors of a liquidated bank after they have been held by it for 6 months from the date of the final liquidation of the institution. Along with this certificate, it shall transmit to the state treasurer the funds with accumulated interest on them, which it has so held in trust for 6 months. A copy of the certificate shall also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund of this state.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer may apply to the department for the amount due him. The depositor or creditor

shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the auditor who shall audit the claim and, if found correct, so certify to the department, which, if it approves the claim, shall transmit the claim to the legislature with a statement of its approval.

History: En. Sec. 137, Ch. 89, L. 1927; re-en. Sec. 4016.147, R.C.M. 1935; amd. Sec. 1, Ch. 143, L. 1961; amd. Sec. 59, Ch. 431, L. 1975; amd. Sec. 2, Ch. 343, L. 1977; R.C.M. 1947, 5-1117.

Cross-References

State finance — fund structure, 17-2-102.

Deposit of funds in the hands of State Treasurer, 17-6-101.

Property of business association or of banking or financial organization held in course of dissolution, 70-9-205.

32-1-538. Disposition of assets remaining after payment of claims. (1) When the department has paid to each depositor and creditor of the bank whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the bank is located. If there are remaining assets on hand, the department may apply to the judge of that court in open court or in chambers for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the bank while it was a going concern, to the directors of the bank in office at the time of closing it, as trustees for stockholders, or to that other person, if any, designated as trustee by a majority of the stockholders. The report and petition shall be set for hearing upon notice which the court may direct. Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties. The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the stockholders as their rights may appear or dispose of the proceeds in some other manner as the stockholders shall by majority action direct. The court may upon request of a majority of the stockholders order the department to close up the trust as provided in subsection (2) of this section.

(2) If the assets of the bank are insufficient for making payments in full to the depositors and creditors of the bank, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the bank with the clerk of court of the county in which the bank is located. Upon notice which the court may order, the report shall be set for hearing before the court and, if found correct and all funds accounted for, the court shall approve it. The department may at the same time and in the report make application to the district court

of the county in which the bank is located for an order directing the closing of the trust, and upon entry of the order closing the trust, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The charter of the bank shall be forfeited and all the stationery, correspondence, books, and records kept by the bank while it was a going concern and considered by the department to be of no value may be destroyed. However, no correspondence or records may be destroyed until 10 years after the date the bank ceased to be a going concern.

(3) On application for orders as provided in this section, the bank shall be made a party by notice issued on order of the court or judge and served in a manner the court directs, and applications authorized by this section may be heard at any time in court or in chambers, as the court may order, upon not less than 5 days' posted or served notice of the hearing.

History: En. Sec. 138, Ch. 89, L. 1927; amd. Sec. 1, Ch. 78, L. 1935; re-en. Sec. 6014.148, R.C.M. 1935; amd. Sec. 60, Ch. 431, L. 1975; R.C.M. 1947, 5-1118.

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Examination and supervision by Department, 32-1-211.

Destruction of bank records, 32-1-491.

Modification and termination of trusts, Title 72, ch. 33, part 4.

32-1-539 through 32-1-550 reserved.

32-1-551. Liquidating officer's powers and duties. (1) At any time after taking possession of a bank for the purpose of liquidation, the liquidating officer duly qualified under the laws, as soon as he ascertains that the assets of such bank will be insufficient to pay its debts and liabilities, may proceed to collect and enforce the stockholders' liability. For that purpose he may institute and maintain in his own name as such liquidating officer appropriate suits or actions in any state or federal court of competent jurisdiction. He may receive and receipt for moneys received on account of stockholders' liability, and any money so paid to the liquidating officer by a stockholder in whole or partial satisfaction of his liability shall not be deemed paid voluntarily but shall give the stockholder the same protection to the extent of the amount paid as if the payments were made after suit by creditor or liquidating officer. The liquidating officer is authorized, by and with the consent of the court having jurisdiction of such liquidation, to compromise, settle, and compound claims for stockholders' liability, and such settlements and compromises when approved by the court shall be legal and binding upon all parties concerned, including creditors.

(2) All sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements, or compromises, shall be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors and without regard to the rank or class or character of claims and without diminution, except that the liquidating officer may deduct from amounts collected the court costs or attorney's fees (such attorney's fees to be allowed for not more than 10% of the amount collected, provided that the 10% allowed for attorney's fees shall not apply to collections which are made outside of the

state of Montana) and other expenses incurred by him in the prosecution of any action for the collection thereof.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; R.C.M. 1947, 5-402.

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

Officers' fees, prepayment, Title 25, ch. 10, part 4.

Powers of receiver, 27-20-302.

Stockholders' liability — effect of insolvency on transfers of stock, 32-1-333.

32-1-552. Further duties of liquidating officer. (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities, and he may determine the question of the time when and the court where necessary legal proceedings shall be conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of 32-1-333 and 32-1-551 through 32-1-553 do not impose any liability on a stockholder of a bank which is a member of the federal deposit insurance corporation.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977; R.C.M. 1947, 5-403(1) thru (3).

Cross-References

Venue, Title 25, ch. 2.

Powers of receiver, 27-20-302.

Federal Deposit Insurance Corporation, Title 32, ch. 1, part 6.

32-1-553. Department to file inventory — report required. The department shall, within 90 days after taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. It shall also every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report shall contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid. The report and account shall be set for hearing upon the notice the court may require and, if found to be correct, shall be approved by the court.

History: En. as part of Sec. 21, Ch. 89, L. 1927; amd. Sec. 1, Ch. 110, L. 1935; re-en. Sec. 6014.25, R.C.M. 1935; amd. Sec. 11, Ch. 431, L. 1975; amd. Sec. 3, Ch. 71, L. 1977; R.C.M. 1947, 5-403(4).

Cross-References

Assignments for benefit of creditors — inventory required, 31-2-213.

Purchase of obligation of bank by officer, 32-1-466.

32-1-554 through 32-1-560 reserved.

32-1-561. Definitions. As used in 32-1-562 through 32-1-565, unless the context requires otherwise, the following definitions apply:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and, to the extent that the provisions of 32-1-562 through 32-1-565 are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(2) "Officer" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of 32-1-562 through 32-1-565 or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices involved.

(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(4) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at any of the offices of a bank or which poses an imminent or existing threat to the safety or security of persons or property or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following:

(a) fire;
(b) flood;
(c) earthquake;
(d) hurricanes;
(e) wind, rain, or snowstorms;
(f) labor disputes and strikes;
(g) power failures;
(h) transportation failures;
(i) interruption of communication facilities;
(j) shortages of fuel, housing, food, transportation, or labor;
(k) robbery or attempted robbery;
(l) actual or threatened enemy attack;
(m) epidemics or other catastrophes;
(n) riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

History: En. Sec. 1, Ch. 32, L. 1971; amd. Sec. 38, Ch. 431, L. 1975; R.C.M. 1947, 5-1058.

Cross-References

Disaster and emergency services, Title 10, ch. 3.

Bank holidays, 32-1-481.

Robbery, 45-5-401.

Theft, 45-6-301.

Riot, 45-8-103.

32-1-562. Power of department. When the department is of the opinion that an emergency exists or is impending in this state or in any part of this state, it may, by proclamation, authorize banks located in the affected area to close any of their offices. In addition, if the department is of the opinion that an emergency exists or is impending which affects or may affect a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, it may authorize the particular bank or banks or office or offices so affected to close. The office or offices so closed shall remain closed until the department proclaims that the emergency has ended or until such earlier time as the officers of the bank determine that one or more offices theretofore closed because of the emergency should reopen and, in either event, for such further time thereafter as may reasonably be required to reopen.

History: En. Sec. 2, Ch. 32, L. 1971; amd. Sec. 39, Ch. 431, L. 1975; R.C.M. 1947, 5-1059.

32-1-563. Powers of officers. (1) When the officers of a bank are of the opinion that an emergency exists or is impending which affects or may affect any of a bank's offices, they may, in the reasonable and proper exercise of their discretion, determine not to open any of those offices on any banking day or, if having opened, to close any of those offices during the continuation of the emergency, even if the department has not issued and does not issue a proclamation of emergency. An office so closed shall remain closed until the officers determine that the emergency has ended and for a further time thereafter as may reasonably be required to reopen. However, in no case shall an office remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the department.

(2) The officers of a bank may close any of the bank's offices on any day:

(a) designated by proclamation of the president of the United States or the governor of this state as a day of mourning, rejoicing, or other special observance; or

(b) that the federal reserve bank of Minneapolis is not open for business.

History: En. Sec. 3, Ch. 32, L. 1971; amd. Sec. 40, Ch. 431, L. 1975; R.C.M. 1947, 5-1060; amd. Sec. 2, Ch. 264, L. 1979.

Cross-References

Powers and duties of Governor, 2-15-201.

Selection of officers and employees — meetings and minutes, 32-1-325.

Bank holidays, 32-1-481.

32-1-564. Notice of bank closing. A bank closing an office under authority granted under 32-1-563(1) shall give to the department as prompt notice of its action as conditions will permit and by any means available, and, in the case of a national bank, to the comptroller of the currency.

History: En. Sec. 4, Ch. 32, L. 1971; amd. Sec. 41, Ch. 431, L. 1975; R.C.M. 1947, 5-1061.

Cross-References

National bank powers extended to state banks, 32-1-362.

Bank holidays, 32-1-481.

32-1-565. Effect of closing. (1) A day on which a bank or any of its offices is closed during any part of its normal banking hours under 32-1-562 and 32-1-563 with respect to that bank or, if not all of its offices are closed, then with respect to the office or offices which are closed shall be a legal holiday for all purposes with respect to any banking business. No liability or loss of rights of any kind on the part of a bank, or director, officer, or employee thereof, may accrue or result by virtue of a closing authorized by 32-1-562 and 32-1-563.

(2) The provisions of 32-1-561 through 32-1-565 are in addition to any other law of this state or of the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control or otherwise.

History: En. Sec. 5, Ch. 32, L. 1971; amd. Sec. 42, Ch. 431, L. 1975; R.C.M. 1947, 5-1062.

Cross-References

Bank holidays, 32-1-481.

Transactions on holidays, 32-1-482.

Part 6

Federal Deposit Insurance Corporation

Part Cross-References

Insurance on deposits of public funds, 17-6-102.

32-1-601. Definition of banking institution. The term "banking institution" as used in this part shall be construed to mean any bank, trust company, bank and trust company, stock savings bank, or mutual savings bank, which is now or may hereafter be organized under the laws of this state.

History: En. Sec. 1, Ch. 197, L. 1937; R.C.M. 1947, 5-1201.

Cross-References

Institutions to which chapter is applicable, 32-1-102.

32-1-602. Banking institutions empowered to receive federal deposit insurance corporation aid. A banking institution may, on the authority of its board of directors or a majority thereof, enter into those contracts, incur those obligations, and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges available to banking institutions or to their depositors, creditors, stockholders, conservators, or liquidators by virtue of those provisions of the Federal Deposit Insurance Act which establish the federal deposit insurance corporation and provide for the insurance of deposits or of any other act or resolution of congress to aid, regulate, or safeguard banking institutions and their depositors. A banking institution may also subscribe for and acquire stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and may comply with the lawful rules and requirements from time to time adopted by that corporation.

History: En. Sec. 2, Ch. 197, L. 1937; amd. Sec. 64, Ch. 431, L. 1975; R.C.M. 1947, 5-1202.

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Investments of financial institutions, 32-1-424.

32-1-603. Appointment of the corporation as agent in liquidation. If a banking institution, the deposits in which are in any extent insured by the federal deposit insurance corporation created by the Federal Deposit Insurance Act, 12 U.S.C. sections 1811-1831, is closed on account of inability to meet the demands of its creditors, the department may appoint the corporation agent, without bond, to assist it or act for it in the liquidation of that banking institution.

History: En. Sec. 3, Ch. 197, L. 1937; amd. Sec. 65, Ch. 431, L. 1975; R.C.M. 1947, 5-1203.

Cross-References

Powers of department on closing bank, 32-1-515.

Further duties of liquidating officer, 32-1-552.

32-1-604. Subrogation of corporation. Whenever any banking institution shall have been closed as aforesaid and said federal deposit insurance corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, said corporation, whether or not it shall have been appointed agent of the department in the liquidation of such closed banking institution, as herein provided, shall be and become subrogated by operation of law to all rights against such closed banking institution of each owner of a claim for deposit to the extent now or hereafter necessary to enable the federal deposit insurance corporation, under federal law, to make insurance payments available to depositors of closed insured banks.

History: En. Sec. 4, Ch. 197, L. 1937; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-1204.

Cross-References

Payment of claims, 32-1-533.

32-1-605. Examinations by the corporation — accepted when. (1) The department may accept, in its discretion, in place of any examination authorized by the laws of this state to be conducted by the department of a banking institution, the examination made of it within a reasonable period by the federal deposit insurance corporation, if a signed copy of the examination is furnished to the department. The department may also, in its discretion, accept a report relative to the condition of a banking institution obtained by the corporation within a reasonable period, in place of a report authorized by the laws of this state to be required of the institution by the department, if a copy of the report is furnished to the department. The department may, in its discretion, disclose to the corporation, or an official or examiner thereof, any information possessed by the department with reference to the conditions or affairs of an insured institution.

(2) The department may furnish to the corporation, or to an official or examiner thereof, a copy or copies of any examinations made of those banking institutions and of any reports made by them.

(3) Nothing in this section limits the duty of any banking institution in this state, deposits in which are to any extent insured under the Federal

Deposit Insurance Act or any substitution for it, to comply with the provisions of that act, its substitutions, or the requirements of that corporation relative to examinations and reports or limits the powers of the department with reference to examinations and reports under existing law.

History: En. Sec. 5, Ch. 197, L. 1937; amd. Sec. 66, Ch. 431, L. 1975; R.C.M. 1947, 5-1205.

Cross-References

Examination and supervision by department, 32-1-211.

Special examination defined, 32-1-214.

Special examinations and fees, 32-1-215.

Examination at request of directors, 32-1-216.

Department to examine trusts, 32-1-217.

32-1-606. Closed banking institutions empowered to borrow from the corporation. If a banking institution is closed on account of inability to meet the demands of its depositors or by action of the department or by action of its directors or, in the event of its insolvency or suspension, the department or its agent, with the permission of the court having jurisdiction, may borrow from the corporation and furnish any of the assets of the institution to the corporation as security for a loan from it. The department upon the order of a district court of competent jurisdiction may sell to the corporation any part or all of the assets of the institution. The provisions of this section do not limit the power of a banking institution or the department to pledge or sell assets in accordance with any existing law.

History: En. Sec. 6, Ch. 197, L. 1937; amd. Sec. 67, Ch. 431, L. 1975; R.C.M. 1947, 5-1206.

Cross-References

Purchase of obligation of bank by officer, 32-1-466.

Power of closed banks to borrow money from governmental agencies, 32-1-507.

Part 7

Uniform Common Trust Act

Part Cross-References

Trust code, Title 72, ch. 33 through 36.

32-1-701. Short title. This part may be cited as the "Uniform Common Trust Act".

History: En. Sec. 4, Ch. 64, L. 1955; R.C.M. 1947, 5-1404.

32-1-702. Application. This part shall apply to fiduciary relationships in existence as of July 1, 1955, or thereafter established.

History: En. Sec. 7, Ch. 64, L. 1955; R.C.M. 1947, 5-1406.

Cross-References

Agency, Title 28, ch. 10.

Fiduciary security transfers, Title 30, ch. 10, part 4.

Estates, Trusts, and Fiduciary Relationships, Title 72.

32-1-703. Common trust fund allowed. (1) Any bank or trust company qualified to act as fiduciary in this state may establish and administer common trust funds composed of property permitted by law for the investment of trust funds for the purpose of furnishing investments to:

(a) itself as fiduciary;

(b) itself and others as cofiduciaries;

(c) any affiliated bank or trust company, including any foreign affiliated bank or trust company, as fiduciary;

(d) any affiliated bank or trust company, including any foreign affiliated bank or trust company, and others as cofiduciaries; or

(e) any combination of the entities listed in subsections (1)(a) through (1)(d).

(2) Any bank or trust company may, as that fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in the common trust funds administered by itself or by any affiliated bank or trust company if the investment is not prohibited by the instrument, judgment, decree, order, or statute creating and governing such fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to the investment.

History: **En. Sec. 1, Ch. 64, L. 1955; amd. Sec. 68, Ch. 431, L. 1975; R.C.M. 1947, 5-1401; amd. Sec. 1, Ch. 213, L. 1981.**

Cross-References

Banks allowed to join federal reserve bank, 32-1-373.

Investments of financial institutions, 32-1-424.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

Trust code, Title 72, ch. 33 through 36.

32-1-704. Accounting for trust funds. Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds, but it may, by application to the district court, secure approval of such an accounting on such conditions as the court may establish.

History: **En. Sec. 2, Ch. 64, L. 1955; R.C.M. 1947, 5-1402.**

32-1-705. Construction. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: **En. Sec. 3, Ch. 64, L. 1955; R.C.M. 1947, 5-1403.**

32-1-706. Common trust funds established. Each common trust fund established hereunder is a separate and distinct entity from the fiduciary relationships participating in the fund. No fiduciary, in administering a participating fiduciary relationship, may be required to make any apportionment or allocation between the principal and income of such relationship different from that made for the common trust fund. No such participating fiduciary relationship or person having an interest in the relationship may have or be considered to have any ownership in any particular property of the common trust fund; but each participating fiduciary relationship shall have a proportionate undivided interest in the fund and its income; and the ownership of all property of the common trust fund shall be in the trustee of the fund.

History: En. 5-1407 by Sec. 1, Ch. 271, L. 1977; R.C.M. 1947, 5-1407; amd. Sec. 2, Ch. 213, L. 1981.

Cross-References

Consolidation or merger of banks, 32-1-371.

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31, part 1.

32-1-707. Affiliated defined. For purposes of this part, two or more banks or trust companies are affiliated if they are members of the same affiliated group, within the meaning of section 1504 of the United States Internal Revenue Code.

History: En. Sec. 3, Ch. 213, L. 1981.

32-1-708. Limited application of insurance law — exemption. (1) Nothing in this part exempts a common trust fund or any fiduciary thereof from the requirements of Title 33 if such common trust fund or fiduciary is used for insurance purposes.

(2) The establishment and maintenance of common trust funds under this part are exempt from the provisions of Title 30, chapter 10.

History: En. Sec. 4, Ch. 213, L. 1981.

Part 8

Subsidiary Trust Companies

Part Cross-References

Trust code, Title 72, ch. 33 through 36.

32-1-801. Short title. This part may be cited as "The Subsidiary Trust Company Act of 1975".

History: En. 5-1501 by Sec. 1, Ch. 401, L. 1975; R.C.M. 1947, 5-1501.

32-1-802. Definitions. As used in this part the following definitions apply:

(1) "Subsidiary trust company" means any corporation which is incorporated under the banking laws of this state and any national banking association having its main office in this state, more than 50% of the voting stock of which is owned by an owning bank holding company and which has as its purposes any one or more of the purposes described in 32-1-107, except that a subsidiary trust company may not be empowered to accept deposits or otherwise to conduct commercial banking business.

(2) "Affiliated bank", with respect to a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office in this state, more than 50% of the voting stock of which is owned by the same owning bank holding company that owns more than 50% of the voting stock of the subsidiary trust company.

(3) "Affiliated bank", with respect to another bank which is not a subsidiary trust company, means any bank incorporated under the laws of this

state and any national banking association having its main office located in this state, more than 50% of the stock of which is owned by the same owning bank holding company that owns more than 50% of the voting stock of such other bank.

(4) "Owning bank holding company", with respect to a subsidiary trust company or an affiliated bank, means a bank holding company as defined in the United States Bank Holding Company Act of 1956, as amended.

(5) "Main office", with respect to a subsidiary trust company or an affiliated bank, is the place designated in the articles of incorporation or articles of association of that subsidiary trust company or affiliated bank at which its principal functions are to be conducted.

(6) "Trust office", with respect to a subsidiary trust company, means an office, including the main office, of the subsidiary trust company maintained for the purpose of conducting its business.

(7) "Trust office", with respect to a bank which is not a subsidiary trust company, means an office other than the main office of that bank maintained solely for the purpose of conducting trust business as described in 32-1-804.

(8) "Fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes the capacities of trustee (including trustee of a common trust fund), executor, administrator, personal representative, registrar, or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state or public authority, guardian of estates, receiver, conservator, escrow agent, agent for the investment of money, attorney-in-fact, and any other similar capacity.

History: En. 5-1502 by Sec. 2, Ch. 401, L. 1975; R.C.M. 1947, 5-1502.

Cross-References

Consolidation or merger of banks, 32-1-371.

Fiduciary defined, 72-1-103.

32-1-803. Organization of subsidiary trust companies. A subsidiary trust company shall be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-303, 32-1-305 through 32-1-322, 32-1-325, and 32-1-351 through 32-1-356 or under the laws of the United States. To the extent not inconsistent with the provisions of this part, any subsidiary trust company incorporated under the laws of this state shall be subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States shall be subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state.

History: En. 5-1503 by Sec. 3, Ch. 401, L. 1975; R.C.M. 1947, 5-1503; amd. Sec. 78, Ch. 370, L. 1987; amd. Sec. 2, Ch. 24, L. 1989.

Cross-References

Business corporations — formation — articles of incorporation — bylaws, Title 35, ch. 1, part 2.

32-1-804. Permissible business of subsidiary trust companies. The permissible business of a subsidiary trust company shall be to engage in such trust business as may be engaged in by a trust company under 32-1-107 and such business as is incidental thereto. A subsidiary trust company shall not accept deposits or otherwise conduct commercial banking business.

History: En. 5-1504 by Sec. 4, Ch. 401, L. 1975; R.C.M. 1947, 5-1504.

32-1-805. Trust offices of subsidiary trust companies. Notwithstanding the provisions of 32-1-372, a subsidiary trust company may have a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which on January 1, 1975, was authorized to act in fiduciary capacities but not elsewhere.

History: En. 5-1505 by Sec. 5, Ch. 401, L. 1975; R.C.M. 1947, 5-1505.

32-1-806. Trust offices of affiliated banks. Notwithstanding the provisions of 32-1-372, a bank having trust powers may be authorized by the department or by the comptroller of the currency, in the case of a national banking association, to maintain a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which on January 1, 1975, was authorized to act in fiduciary capacities.

History: En. 5-1506 by Sec. 6, Ch. 401, L. 1975; R.C.M. 1947, 5-1506.

Cross-References

Trust code, Title 72, ch. 33 through 36.

32-1-807. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies. (1) Upon any subsidiary trust company being duly authorized to commence the business for which it is organized, such subsidiary trust company may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each such specified affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of each affiliated bank joining in the application is located and shall designate each fiduciary account existing at the date thereof with respect to which such subsidiary trust company requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, to wit:

(a) in the case of an existing fiduciary account which may be revoked, terminated, or amended, each person who, alone or together with others, is empowered to revoke, terminate, or amend the same;

(b) in the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each person who, alone or together with others, is empowered to remove the corporate fiduciary;

(c) in the case of an existing fiduciary account which is an estate of a deceased person or which is a guardianship or conservatorship, to the clerk of the court in which such estate, guardianship, or conservatorship matter is pending;

(d) in the case of an existing fiduciary account not described in any of the foregoing subsections, to each income beneficiary of such account and to each beneficiary who, were such account terminated at the date of the application respecting such account, would be entitled to share in distributions of income or principal thereof; and

(e) in the case of any existing fiduciary account wherein an affiliated bank specified in the application is acting with a cofiduciary, to each such cofiduciary at his last known address.

(2) When any such application shall have been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and give notice thereof as hereinafter provided. The clerk of court shall cause a copy of such notice to be published at least once a week for 3 successive weeks preceding the hearing date, the first such publication to be at least 25 days preceding the hearing date, such publication to be in a newspaper of general circulation published in each county in which the main office of an affiliated bank specified in the application is located or, if in any case there be no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least 25 days preceding the hearing date, the clerk of the court shall cause a copy of such notice to be mailed by first-class mail to each person identified in the application as being entitled to mailed notice under the provisions of this part, at his address last known to the applicant as set forth in the application.

(3) The notice to be published and mailed with respect to each such application shall state the time and place of the hearing thereon, the name of the subsidiary trust company which has filed the application, the name of each affiliated bank which has joined in such application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its affiliated banks specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the subsidiary trust company is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this part and upon finding that the subsidiary trust company has been duly authorized to commence the business for which it is organized by the department or the comptroller of the currency if the subsidiary trust company is a national banking association, the district court shall enter an order substituting the subsidiary trust company in every fiduciary capacity for each of its specified affiliated banks, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section.

Upon entry of such order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the subsidiary trust company substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other instrument of any discretionary power shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the subsidiary trust company which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the subsidiary trust company is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary (except assets held for accounts with respect to which there has been no substitution pursuant to this section), and upon such substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance.

History: En. 5-1507 by Sec. 7, Ch. 401, L. 1975; R.C.M. 1947, 5-1507.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Hearings — notice, 32-1-204.

Trustees — duty not to delegate, 72-34-113.

32-1-808. Transfer of fiduciary relationships between affiliated banks. (1) Any bank which has received approval pursuant to 32-1-806 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank, and such affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of such affiliated bank is located and shall designate each fiduciary account existing at the date thereof with respect to which the applicant bank requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, who shall be those persons specified in subsections (1)(a) through (1)(e) of 32-1-807.

(2) When any such application has been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and shall cause notice thereof to be given by publication and mailing in the manner required by 32-1-807.

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing thereon, the name of the bank which has filed the application, the name of the affiliated bank which has joined in such application, that the application requests that the applicant bank be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the applicant bank is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this part and upon finding that the applicant bank has received the requisite approval from the department or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the applicant bank shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the applicant bank substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other such instrument of any discretionary power shall be deemed conferred upon the applicant bank deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the applicant bank which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the applicant bank is initially so substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to such applicant bank all assets held by such affiliated bank as fiduciary (except assets held for accounts with respect of which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of such applicant bank without the necessity of any instrument of transfer or conveyance.

History: **En. 5-1508 by Sec. 8, Ch. 401, L. 1975; amd. Sec. 27, Ch. 71, L. 1977; R.C.M. 1947, 5-1508.**

Cross-References

Trustees — duty not to delegate, 72-34-113.

Judicial proceedings concerning trusts, Title 72, ch. 35.

Part 9

Removal of Directors or Officers of Financial Institutions

Part Cross-References

Theft, 45-6-301.

Issuing a bad check, 45-6-316.

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

32-1-901. Definitions. For purposes of this part, the following definitions shall apply:

(1) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the director with the consent of the institution or the board member, officer, or other person concerned, with respect to which no timely petition for review of the action of the director has been filed in a district court as specified in 32-1-908(2) or with respect to which the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(2) "Director" means the director of the department of commerce.

(3) "Institution" means a commercial bank, savings bank, trust company, or investment company chartered under Title 32, chapter 1, MCA.

(4) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding, or abetting a violation.

(5) "Board member" means a member of the board of directors of the institution.

History: En. Sec. 1, Ch. 76, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.

32-1-902. Notice of charges — hearing — cease and desist order — effective date. (1) If the director has reasonable cause to believe that any institution is engaging or has engaged or is about to engage in an unsafe or unsound practice in conducting the business of such institution or is violating, has violated, or is about to violate a law or rule, the director may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution.

(2) The hearing may not be earlier than 30 days or later than 60 days after service of the notice unless an earlier or a later date is set by the director at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of the cease and desist order. In the event of such consent or

if upon the record made at any such hearing the director finds that any unsafe or unsound practice or violation specified in the notice of charges has been established by the preponderance of the evidence, the director may issue and serve upon the institution an order to cease and desist from any such practice or violation. By provisions which may be mandatory or otherwise, the order may require the institution and its board members, officers, employees, and agents to cease and desist from such practice or violation and to take affirmative action to correct the conditions resulting from any such practice or violation.

(3) A cease and desist order becomes effective at the expiration of 45 days after the service of the order upon the institution, except in the case of an order issued upon consent which is effective at the time specified therein, and remains effective and enforceable as provided therein, except to the extent it is stayed, modified, terminated, or set aside by the action of the director or a reviewing court.

History: En. Sec. 2, Ch. 76, L. 1979.

Cross-References

Contested cases — notice, 2-4-601.

Hearings — notice, 32-1-204.

Sale of securities by officer to bank, 32-1-463.

Fraud by director, officer, or employee, 32-1-464.

Overdraft by officer or employee — receiving personal profit from loan, 32-1-465.

Purchase of obligation of bank by officer, 32-1-466.

Loans to managing officer or director, 32-1-467.

Removal of directors, officers, or employees, 32-1-468.

Penalty for unlawful hypothecation of property, 32-1-471.

Theft of bank funds by officers or employees, 32-1-473.

32-1-903. Informal conferences — time for application. Within 15 days after service of the notice of charges, either the institution or department may request an informal conference to discuss the charges and the possible disposition of them without a formal hearing process. The conference shall be carried out in accordance with the provisions of 2-4-603. Upon a proper showing, the director in his discretion may withdraw charges and proceedings for a cease and desist order.

History: En. Sec. 3, Ch. 76, L. 1979.

Cross-References

Examination and supervision by department, 32-1-211.

32-1-904. Temporary cease and desist order — grounds for issuance — effective date — injunctive relief. (1) Whenever the director determines that any violation or threatened violation or any unsafe or unsound practice specified in the notice of charges served upon the institution pursuant to 32-1-902(1) or the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the institution or is likely to otherwise seriously prejudice the interests of its depositors, the director may issue a temporary order requiring the institution to cease and desist from such violation or practice. Such order shall contain a statement of the facts constituting the alleged violation or unsafe or unsound practice. The order is effective upon service upon the institution and unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2) of this section remains effective and enforceable until the completion of the administrative proceedings pursuant to such notice of charges, until the director dismisses the charges specified in the notice, or until a cease and desist order which is issued against the institution after the hearing becomes effective.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the district court for the county in which the home office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings held pursuant to the notice of charges served upon the institution under 32-1-902(1). The court has jurisdiction to issue the injunction.

History: En. Sec. 4, Ch. 76, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

32-1-905. Notice of intention to remove board member or officer or to prohibit participation — suspension. (1) The director may serve upon a board member or officer of an institution a written notice of intention to remove him from office whenever the director has reasonable cause to believe:

(a) the board member or officer has:

(i) committed any violation of law involving dishonesty or breach of trust;

(ii) violated a cease and desist order which has become final;

(iii) engaged or participated in any unsafe or unsound practice in connection with the institution; or

(iv) committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as a board member or officer of the institution; and

(b) the institution has suffered or will probably suffer substantial financial loss or other damage or the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty involving personal dishonesty on the part of such board member or officer.

(2) Whenever in the opinion of the director any board member or officer of an institution has, by conduct or practice with respect to another institution or business organization which has resulted in substantial financial loss or other damage to that institution or business organization, evidenced his personal disability and unfitness to continue as a board member or officer of the institution, and whenever the director has reasonable cause to believe that any other person participating in the conduct of the affairs of an institution has, by conduct or practice with respect to such institution, another institution, or other business organization which has resulted in substantial financial loss or other damage to the institution or business organization, evidenced his personal disability and unfitness to participate in the conduct of the affairs of such institution, the director may serve upon the board member, officer, or other person a written notice of intention to remove such person from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(3) A notice of intention to remove a board member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an institution shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. The hearing shall be held not earlier than 30 days or later than 60 days after the date of service of the notice, unless an earlier or later date is set by the director at the request of the board member, officer, or other person and for good cause shown.

(4) Unless the board member, officer, or other person appears at the hearing in person or by a duly authorized representative, he shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established by the preponderance of the evidence, the director may issue such orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution as he considers appropriate. The order becomes effective 30 days after service upon the institution and the board member, officer, or other person concerned, except in the case of an order issued upon consent which becomes effective at the time specified therein. The order remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

History: En. Sec. 5, Ch. 76, L. 1979.

Cross-References

False statements and entries considered felony, 32-1-236.

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

Fraud by director, officer, or employee, 32-1-464.

Removal of directors, officers, or employees, 32-1-468.

Theft of bank funds by officers or employees, 32-1-473.

Penalty for receiving deposits when insolvent or for making false statements, 32-1-505.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Tampering with public records or information, 45-7-208.

32-1-906. Informal conferences — time for application. Within 15 days after service of the notice of charges, either the board member, officer, or other person may request an informal conference to discuss the charges and the possible disposition of them without formal hearing process. The conference shall be carried out in accordance with the provisions of 2-4-603. Upon a proper showing the director in his discretion may withdraw charges and proceedings for a cease and desist order.

History: En. Sec. 6, Ch. 76, L. 1979.

Cross-References

Examination and supervision by department, 32-1-211.

32-1-907. Suspension or prohibition effective upon service — stay. (1) With respect to any board member or officer of an institution or any other person to whom notice is sent pursuant to 32-1-905, if the director considers it necessary for the protection of the institution or the interests of its depositors that the board member, officer, or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the director may serve upon such board member, officer, or other person a written notice suspending him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution. The notice shall contain a statement of the facts constituting grounds for the order and shall fix a time, not later than 10 days from the date of the service of the notice, at which a hearing will be held to afford the board member or officer the opportunity to respond. The suspension or prohibition is effective upon service of the notice and unless stayed by a court in proceedings authorized by subsection (2) of this section shall remain in effect until the completion of the administrative proceedings pursuant to the notice served under 32-1-904, until such time as the director dismisses the charges specified in such notice, or until the order of removal or prohibition which is issued against the board member, officer, or other person becomes effective. Copies of the notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs he has participated.

(2) Within 10 days after the hearing provided for in subsection (1) of this section, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the board member, officer, or other person under 32-1-904. The court has jurisdiction to stay the suspension or prohibition.

History: En. Sec. 7, Ch. 76, L. 1979.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Removal of directors, officers, or employees, 32-1-468.

32-1-908. Felony charges — suspension or prohibition. (1) Whenever any board member or officer of an institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint authorized by a county, state, or federal authority with the commission of or participation in a felony involving dishonesty or breach of trust, the director by written notice served upon the board member, officer, or other person may suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution. Suspension is effective upon service upon the individual. The notice shall contain a statement of the facts constituting grounds for the order and shall fix a place and time, not later than 10 days from the date of the notice, at which a hearing will be held to afford the board member or officer the opportunity to respond. A copy of the notice shall also be served upon the institution. The suspension or prohibition remains in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director.

(2) Within 10 days after the hearing provided for in subsection (1) of this section, the board member, officer, or other person may apply to the district court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the criminal

proceedings initiated by the information, indictment, warrant or complaint. The court has jurisdiction to stay the suspension or prohibition.

(3) If a judgment of conviction with respect to the offense is entered against the board member, officer, or other person and at such time as the judgment is not subject to further appellate review, the director may issue and serve upon the board member, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the director. A copy of the order shall also be served upon the institution, whereupon the board member or officer shall cease to be a board member or officer of the institution. A finding of not guilty or other disposition of the charge does not preclude the director from thereafter instituting proceedings to suspend or remove the board member, officer, or other person from office or to prohibit further participation in the affairs of the institution pursuant to 32-1-905 or 32-1-906.

History: En. Sec. 8, Ch. 76, L. 1979.

Cross-References

Hearing — Rules of Evidence, cross-examination, judicial notice, 2-4-612.

False statements and entries considered felony, 32-1-236.

Fraud by director, officer, or employee, 32-1-464.

Removal of directors, officers, or employees, 32-1-468.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

Filing of information, Title 46, ch. 11, part 2.

32-1-909. Board of directors — lack of quorum — temporary board members. If at any time because of the suspension or removal of one or more board members pursuant to this part the board of directors of an institution has less than a quorum of board members not so suspended or removed, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the board members not so suspended or removed until such time as there is a quorum of the board members. If all of the board members have been suspended or removed, the director shall appoint persons to serve temporarily as board members, pending the termination of the suspensions or removals or until such time as their successors are duly elected and take office.

History: En. Sec. 9, Ch. 76, L. 1979.

Cross-References

Board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-1-910. Hearings — decision — review, modification, termination or stay of orders. (1) Any hearing provided for in this part shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act. The hearing shall be private unless the director, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the director has notified the parties that the case has been submitted to him for final decision, he shall render his decision, which shall include findings of fact upon which his decision is predicated, and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

(2) Any party to the hearing or any person required by an order issued under this part to cease and desist from any of the violations or practices stated therein or any person suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order, which review shall be pursuant to the Montana Administrative Procedure Act. Unless a petition for review is timely filed as provided in the Montana Administrative Procedure Act, the director, at any time, upon such notice and in such manner as he considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the director may modify, terminate, or set aside the order with the permission of the court.

History: En. Sec. 10, Ch. 76, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Judicial review of contested cases, Title 2, ch. 4, part 7.

32-1-911. Notices and orders — manner of service — copies to federal authorities. Any service required or authorized to be made by the director pursuant to this part shall be made upon individual board members and officers by personal service and may be made upon institutions by registered or certified mail or in such other manner reasonably calculated to give actual notice as the director by rule or otherwise may provide. Copies of any notice or order served by the director pursuant to the provisions of this part upon any institution or any board member or officer thereof or other person participating in the conduct of its affairs may also be sent to the appropriate federal supervisory authorities.

History: En. Sec. 13, Ch. 76, L. 1979.

Cross-References

Confidentiality — penalties, 32-1-234.

32-1-912. Enforcement of notices or orders. The director may apply to the district court of the county in which the home office of the institution is located or to the district court for Lewis and Clark County for the enforcement of any effective and outstanding notice or order issued under this part. The court has jurisdiction to require compliance therewith.

History: En. Sec. 11, Ch. 76, L. 1979.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Judicial remedies defined, 27-1-101.

32-1-913 through 32-1-920 reserved.

32-1-921. Violation of notice or final order — penalties. Any present or former board member or officer of an institution or any other person against whom there is outstanding and effective any notice or final order served upon the board member, officer, or other person pursuant to 32-1-905, 32-1-907, or

32-1-908 who participates in any manner in the conduct of the affairs of such institution; directly or indirectly solicits, procures, transfers, or attempts to transfer votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution; or without the prior written approval of the director, votes for a board member or serves as a board member, officer, or employee of such institution is guilty of a misdemeanor and may be fined not more than $1,000 or imprisoned for not more than 6 months, or both.

History: En. Sec. 12, Ch. 76, L. 1979.

Cross-References

Elections — how conducted, 32-1-323.

Persons previously convicted under banking laws — bank employment, 32-1-462.

Classification of offenses, 45-1-201.

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CHAPTER 2

BUILDING AND LOAN ASSOCIATIONS

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Chapter Cross-References

Homeowners' loan corporation and housing bonds — investments and security, 7-15-4504, 7-15-4505, 17-6-103, 32-1-424, 32-2-406, 33-2-833, 72-31-102.

Taxation of association, 15-24-801.

Credit Transactions and Relationships, Title 31.

Definition of regulated lender, 31-1-111.

Insurance premium finance companies, Title 33, ch. 14.

Discrimination prohibited in financial transactions, 49-2-101, 49-2-305, 49-2-307, 49-3-206.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Part 1

General Provisions

32-2-101. Purpose — definitions. (1) A corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans on real estate mortgage security shall be known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

(2) The associations have continual succession and shall be organized under the provisions of this chapter.

(3) When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock association.

(d) "Member" means:

(i) a person holding a savings account of a mutual association;

(ii) a person borrowing from or assuming or obligated upon a loan or an interest therein held by the association;

(iii) a person purchasing property securing a loan or interest therein held by such association; or

(iv) any other person obligated to the association.

(e) "Mutual association" means a building and loan association formed without authority to issue stock.

(f) "Savings account" means that part of the savings liability of the association which is credited to the account of the holder thereof and includes any form of withdrawable deposit.

(g) "Stock association" means a building and loan association formed with authority to issue stock.

(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.

(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership.

History: Ap. p. Sec. 1, Ch. 57, L. 1927; re-en. Sec. 6355.1, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1945; amd. Sec. 1, Ch. 68, L. 1949; amd. Sec. 69, Ch. 431, L. 1975; Sec. 7-101, R.C.M. 1947; Ap. p. Sec. 13, Ch. 57, L. 1927; re-en. Sec. 6355.14, R.C.M. 1935; Sec. 7-115, R.C.M. 1947; R.C.M. 1947, 7-101, 7-115; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 5, L. 1983.

Cross-References

Powers and duties of building and loan associations, 32-2-401.

32-2-102. Fees paid into state treasury. All fees provided for in this chapter and paid to the department or secretary of state shall be by them turned in to the state treasury for the credit of the state special revenue fund for the use of the department in its examination function.

History: En. Sec. 27, Ch. 57, L. 1927; amd. Sec. 1, Ch. 10, L. 1931; re-en. Sec. 6355.28, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-129; amd. Sec. 3, Ch. 600, L. 1985.

Cross-References

State finance — fund structure, 17-2-102.

32-2-103. Application of chapter. (1) The provisions of this chapter shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees, or combinations of persons, whether foreign or domestic and whether citizens of this state or otherwise, that transact or attempt to transact a building and loan business or a business of like kind or character or where, by its or their charter, constitution, bylaws, or by a declaration of trust or other device or by a contract or agreement, the members or customers are required to pay regular installments to a common fund or series from which loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes within the boundaries of this state.

(2) The name association when used in this chapter shall be deemed to include any of the above-named.

(3) This chapter does not apply to foreign associations with relation to the purchasing of or participating in loans secured by mortgages, trust indentures, or other security interests in real or personal property if there is no activity conducted by the out-of-state lender in Montana with respect to the loan except periodic inspection of the security.

History: En. Sec. 28, Ch. 57, L. 1927; re-en. Sec. 6355.29, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1977; R.C.M. 1947, 7-130.

Cross-References

Foreign associations — requirements, 32-2-261.

32-2-104. Conformity required. (1) The powers, rights, duties, privileges, and obligations of every association organized and doing business in a form similar to that authorized by this chapter shall be governed, controlled, construed, extended, limited, and determined by the provisions of this chapter to the same extent and effect as if the association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws, and rules of each heretofore made or existing are hereby modified, altered, and amended to conform with the provisions of this chapter, and the same are declared void where the articles of incorporation, bylaws, or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between the association and its shareholders or any one of them or any other person or persons or any valid contract between the shareholders of the association existing on May 1, 1927, shall not be in any way impaired by the provisions of this chapter.

(2) With these exceptions every building and loan association shall possess the powers, rights, duties, and privileges and be subject to the obligations, restrictions, and liabilities conferred and imposed by this chapter, notwithstanding anything to the contrary in its articles of incorporation, bylaws, or rules.

(3) All obligations to the association heretofore contracted shall be enforceable by it and in its name, and demands, claims, and rights of action against the association shall be enforced against it as fully and completely as they might have been enforced before.

(4) Except as above set forth, on and after September 7, 1927, no domestic or foreign association engaged as of March 7, 1927, in the business of a building and loan association or a business of like character shall be permitted to conduct that business in this state unless it complies in every respect with the provisions of this chapter.

History: En. Sec. 34, Ch. 57, L. 1927; re-en. Sec. 6355.35, R.C.M. 1935; amd. Sec. 81, Ch. 431, L. 1975; R.C.M. 1947, 7-136.

Cross-References

Business corporations — formation, articles of incorporation, bylaws, Title 35, ch. 1, part 2.

32-2-105. Laws of other states — reciprocity. When by the laws of any other state, territory, or nation any taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions are imposed on building and loan associations of this state doing business in such other state, territory, or nation, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions shall be imposed on the associations of such other state, territory, or nation doing or attempting to do a building and loan business or a business of like kind or character in this state and upon their agents herein.

History: En. Sec. 33, Ch. 57, L. 1927; re-en. Sec. 6355.34, R.C.M. 1935; R.C.M. 1947, 7-135.

Cross-References

National bank powers extended to state banks, 32-1-362.

32-2-106. Penalties. (1) It shall be unlawful for any association, whether foreign or domestic and whether citizens of this state or otherwise, to do business or attempt to do business, as defined in this chapter, without having first complied with its provisions and having received a certificate of authority to do business from the department. Any such association violating any of the provisions of this chapter and failing to comply with any of its provisions shall be fined not less than $250 or more than $1,000 for each and every such violation, to be recovered by an action in the name of the state and on collection, except when collected by a justice's court, paid into the state treasury.

(2) Any person or persons, whether citizens of this state or otherwise, who aid or assist any such association to do business contrary to the provisions of this chapter without having first complied with all of its provisions shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than $500 or imprisoned not more than 6 months, or both.

History: En. Sec. 35, Ch. 57, L. 1927; re-en. Sec. 6355.36, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-137; amd. Sec. 19, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Treasury funds and accounts, Title 17, ch. 2, part 1.

Capital stock requirements — investigation — certificate of incorporation, how issued, 32-2-205.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-2-107. Obtaining property by fraud — false report — refusal to permit inspection of books. A director, officer, agent, or employee of a building and loan association is guilty of a felony who:

(1) willfully receives or possesses any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or direct to be made a full and true entry of it in its books and accounts;

(b) concurs in omitting to make a material entry thereof;

(2) willfully makes or concurs in making or publishing a written report, exhibit, or statement of the association's affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of the association's books, willfully refuses or neglects to make a proper entry in the books as required by law or to exhibit or allow them to be inspected and extracts to be taken from them by the department.

History: En. Sec. 37, Ch. 57, L. 1927; re-en. Sec. 6355.38, R.C.M. 1935; amd. Sec. 83, Ch. 431, L. 1975; amd. Sec. 30, Ch. 71, L. 1977; R.C.M. 1947, 7-139.

Cross-References

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Banks — fraud by director, officer, or employee, 32-1-464.

Department report, 32-2-306.

Reports and examinations by department confidential, 32-2-307.

Classification of offenses, 45-1-201.
Felony defined, 45-2-101.

32-2-108. Purchase of obligations of association by officer. No director, officer, agent, or other employee of any building and loan association shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any obligation of said association for a less sum than shall appear upon the books of such association to be the value thereof. Every person violating the provisions of this section shall for each offense forfeit to the state three times the face value of any such obligation so purchased.

History: En. Sec. 38, Ch. 57, L. 1927; re-en. Sec. 6355.39, R.C.M. 1935; R.C.M. 1947, 7-140.

Cross-References

Purchase of obligation of bank by officer, 32-1-466.

32-2-109. Purchase of assets of association by officer. No officer, director, agent, or other employee of any association shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any of the assets of any building and loan association for a less sum than the book value thereof. Every person violating any provision of this section shall for each offense forfeit to the state twice the nominal value of any such assets so purchased.

History: En. Sec. 39, Ch. 57, L. 1927; re-en. Sec. 6399.40, R.C.M. 1935; R.C.M. 1947, 7-141.

32-2-110. Payments to be made by building and loan associations. For the credit of the state special revenue fund for the use of the department in its examination function, each building and loan association under the supervision of the department shall pay to the state treasurer, on or before July 1 each year, a fee established by the department by rule on or before June 1 of each year. The fees must be set to recover all of the costs of the program of supervision of building and loan associations.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; re-en. Sec. 6014.83, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 5-909; amd. Sec. 4, Ch. 600, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
State finance — fund structure, 17-2-102.

32-2-111. Equality of rights. With the approval of the department, a building and loan association chartered pursuant to the laws of this state may exercise or possess any right, power, privilege, benefit, immunity, or exemption possessed by a federal savings and loan association doing business in this state that is now provided or that may be provided after April 29, 1981, by the laws of the United States or regulations of the federal home loan bank board. This grant is in addition to grants provided in and takes priority over any statute of this state. The department may exercise the discretion granted in this section by issuance of a special order upon written request from any state-chartered building and loan association with respect to any particular item and may grant such request upon such conditions as it shall determine are in the best interest of the members or depositors of the association and of the general public. The department shall require any state-chartered building and loan association seeking such special orders to obtain and maintain insurance of accounts acceptable to the department, excluding alien insurers.

History: **En. Sec. 1, Ch. 558, L. 1981.**

Cross-References

National bank powers extended to state banks, 32-1-362.

Part 2

Organization and Reorganization

Part Cross-References

Corporation license tax rate and return — banks and savings and loan associations, Title 15, ch. 31, part 7.

32-2-201. Articles of incorporation — contents. Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this chapter, they shall prepare and file articles of incorporation to that effect in the manner specified in this chapter. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing corporation established under the laws of this state. The words "building and loan association" or "savings and loan association" shall form a part of the name, and a corporation not organized under this chapter may not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association, which shall be within this state;

(3) if a capital stock association, the aggregate number of shares which the corporation will have authority to issue;

(4) a provision that such association is organized under this chapter for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators.

History: **En. Sec. 2, Ch. 57, L. 1927; re-en. Sec. 6355.2, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1949; amd. Sec. 28, Ch. 71, L. 1977; R.C.M. 1947, 7-102; amd. Sec. 2, Ch. 5, L. 1983.**

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

"Capital stock" defined, 32-2-101.

32-2-202. Certified copy of articles prima facie evidence. A certified copy of any articles of incorporation filed in pursuance of this chapter must be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 3, Ch. 57, L. 1927; re-en. Sec. 6355.3, R.C.M. 1935; R.C.M. 1947, 7-103.

Cross-References

Contents of writings, recordings, and photographs — requirement of original, Rule 1002, M.R.Ev. (see Title 26, ch. 10).

32-2-203. Evidence of corporate existence or capacity. The certificate issued by the secretary of state in pursuance of 32-2-205 or a certificate issued by the department setting forth that any association, domestic or foreign, has fully complied with the provisions of this chapter and is lawfully authorized to transact business in this state shall be admitted in evidence in all courts in this state and shall be prima facie evidence of the corporate character and capacity of such association and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of quo warranto.

History: En. Sec. 4, Ch. 57, L. 1927; re-en. Sec. 6355.4, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-104.

Cross-References

Quo warranto, Title 27, ch. 28.

Banks and trust companies — filing of certificate and articles of agreement, 32-1-305.

32-2-204. Bylaws. (1) Contemporaneously with or immediately following the execution of said articles of incorporation provided for in 32-2-201, the incorporators then acting in the capacity of directors shall adopt appropriate bylaws to govern and prescribe the methods and the officers by whom the business of the association shall be conducted.

(2) The bylaws shall be in conformity with the provisions of this chapter and at all times during the regular hours of business shall be open to the inspection of the members at its principal place of business.

(3) The bylaws, among other things, shall especially provide for:

(a) the character and method of conducting the business of the association, with rules governing the addition of members, the sale of its shares, the amount of membership fee;

(b) the annual meeting of the shareholders;

(c) the annual election and qualification of directors and the term or period during which the directors shall serve, provided that the term or period for all directors shall not be less than 1 or more than 3 years and that the directors shall be so elected that as near as possible the term of an equal number shall expire each year;

(d) the appointment of officers;

(e) the adoption, ratification, and amendment of the bylaws, which adoption, ratification, and amendment may be made either by the stockholders or board of directors;

(f) the method of voting at such annual meeting; and

(g) the periodical investigation of the business and condition of such association.

(4) No bylaws and no change or amendment thereof shall be effective until first approved by the department, and no association shall commence the transaction of business as such until the bylaws are first approved by the department.

History: En. Sec. 5, Ch. 57, L. 1927; re-en. Sec. 6355.5, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-105.

Cross-References

Banks and trust companies — bylaws, 32-1-308.

32-2-205. Investigation — certificate of incorporation, how issued. (1) (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 and, in the case of a mutual association, the requirements of 32-2-232 have been complied with or, in the case of a capital stock association, the requirements of 32-2-241 have been complied with, the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

(2) (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators, who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the association is complete.

History: En. Sec. 6, Ch. 57, L. 1927; re-en. Sec. 6355.6, R.C.M. 1935; amd. Sec. 70, Ch. 431, L. 1975; R.C.M. 1947, 7-106; amd. Sec. 3, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — amount of capital, 32-1-307.

32-2-206. Directors — meetings — officers. (1) The conduct and management of the affairs and business of such association shall be vested in a board of directors which shall consist of not less than five or more than nine members.

(2) Within 30 days after the corporate existence of an association begins, the directors of the association shall hold an organizational meeting and shall elect officers pursuant to the provisions of this chapter and the bylaws. At the organizational meeting the directors shall take such other action as is appropriate in connection with beginning the transaction of business by the association. The department may extend, by order, the time within which the organizational meeting must be held.

(3) The incorporators of the association shall serve as directors until the first meeting of the stockholders to be held at the time provided for by this chapter or until their successors are elected and qualified, after which the directors shall be elected by the stockholders of the association in accordance with the provisions of this chapter and the bylaws of the association.

(4) The directors, unless it is otherwise provided by the bylaws of the association, shall elect or appoint all the officers of the association. Such directors when appointed or elected shall file with the department their oath of office, as provided in election or appointment of bank directors. Meetings of the board of directors must be held at least once each month.

History: En. Sec. 7, Ch. 57, L. 1927; re-en. Sec. 6355.7, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-107; (2)En. Sec. 29, Ch. 5, L. 1983.

Cross-References

Banks — board of directors, oath of office, 32-1-322.

Business corporations — directors and officers, Title 35, ch. 1, part 4.

32-2-207. Removal of directors. No director shall be removed from office except as herein provided or by a vote of the members of a mutual association representing two-thirds of the withdrawable deposits in the association or the stockholders of a capital stock corporation holding two-thirds of the capital stock, at a general meeting held after previous notice given in the manner provided in 32-2-209. Meetings of the members or stockholders for this purpose may be called by the president or by a majority of the directors or by stockholders holding not less than 25% of the capital stock.

History: En. Sec. 8, Ch. 57, L. 1927; re-en. Sec. 6355.9, R.C.M. 1935; R.C.M. 1947, 7-109; amd. Sec. 4, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors, officers, or employees, 32-2-304.

32-2-208. Meetings of members or stockholders. (1) The meetings of the members or stockholders of a Montana building and loan association must be held at its office or principal place of business in this state.

(2) In its bylaws, such association shall provide for at least one regular meeting of members or stockholders annually. Notice of any meeting, whether regular or special, shall be given by the secretary in accordance with 32-2-209. The board of directors shall have the right to call a special meeting at any time. The board of directors must also call a special meeting whenever petitioned to do so by:

(a) members of a mutual association representing at least 25% of the withdrawable deposits of the association; or

(b) stockholders owning at least 25% of the issued stock.

(3) The secretary shall call special meetings in the same manner as provided in 32-2-209.

History: En. Sec. 9, Ch. 57, L. 1927; re-en. Sec. 6355.10, R.C.M. 1935; R.C.M. 1947, 7-110; amd. Sec. 5, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

32-2-209. Notice of meetings. (1) At least 30 days prior to any annual or special meeting of any association, a notice stating the time and place of the meeting shall be deposited in the post office at the principal place of business of such association, directed to each member or stockholder at his address, as the same appears at the time on the books of the association, and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any meeting.

(2) In addition thereto notice may be given by four consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. Such publication shall be complete on the day of the fourth publication.

(3) In notices of special meetings there shall be attached to and accompanying such notice a statement of any matter or matters to be considered at said meeting.

(4) All members or stockholders of the association shall be entitled to vote at the meetings in person or by proxy.

History: En. Sec. 10, Ch. 57, L. 1927; re-en. Sec. 6355.11, R.C.M. 1935; R.C.M. 1947, 7-111; amd. Sec. 6, Ch. 5, L. 1983.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every member or stockholder of such association a blank form of proxy, and the member or stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the member or stockholder until such proxy is revoked or another substituted.

History: En. Sec. 11, Ch. 57, L. 1927; re-en. Sec. 6355.12, R.C.M. 1935; amd. Sec. 29, Ch. 71, L. 1977; R.C.M. 1947, 7-112; amd. Sec. 7, Ch. 5, L. 1983.

32-2-211. Transfer of stock or account — effect. (1) The delivery of a capital stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

(2) A savings account or any interest therein is transferable on the books of the association only upon proper written application and acceptance by the association of the transferee as a member, subject to terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof without being affected by any notice to the contrary unless the association has acknowledged in writing the receipt of notice of a pledge of the savings account.

History: En. Sec. 14, Ch. 57, L. 1927; re-en. Sec. 6355.15, R.C.M. 1935; R.C.M. 1947, 7-116; amd. Sec. 8, Ch. 5, L. 1983.

Cross-References

Securities transferable — action for price, 30-8-107.

When transfer to purchaser occurs, 30-8-313.

Banks and trust companies — transfer of stock, 32-1-332.

32-2-212. Requirements of transfer in certain cases. When a certificate of stock or a savings account in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock or account on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from the attorney, agent, or claimant a bond of indemnity, with a surety or sureties satisfactory to the officers of such association, to protect such association against any liability to the owner, assignee, or transferee of such shares or account or the legal representatives of the owners of such shares or account, in case of his or her death before the transfer, and also to protect the association against any liability accruing or resulting by reason of said lost or original certificate being thereafter presented to it. If the affidavit or other evidence or bond is not furnished when required as herein provided, neither the association nor any officer thereof shall be liable for refusing to enter the transfer on the books of the association.

History: En. Sec. 15, Ch. 57, L. 1927; re-en. Sec. 6355.16, R.C.M. 1935; R.C.M. 1947, 7-117; amd. Sec. 9, Ch. 5, L. 1983.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Suretyship, Title 28, ch. 11, part 4.

Purchaser's right to requisites for registration of transfer, pledge, or release on books, 30-8-316.

32-2-213 through 32-2-220 reserved.

32-2-221. Renumbered 32-2-261 by Code Commissioner, 1983.

32-2-222. Renumbered 32-2-262 by Code Commissioner, 1983.

32-2-223. Renumbered 32-2-263 by Code Commissioner, 1983.

32-2-224. Renumbered 32-2-264 by Code Commissioner, 1983.

32-2-225 through 32-2-230 reserved.

32-2-231. Renumbered 32-2-271 by Code Commissioner, 1983.

32-2-232. Organization of mutual associations. The incorporators of a mutual association shall appoint one of their number as chairman of the incorporators, and he shall procure from a surety company or other surety acceptable to the department a surety bond in an amount no less than the sum of the amount subscribed by the incorporators and the amount of the expense fund described in 32-2-233. The bond shall name the department as obligee and shall be delivered to it. The bond shall assure the safekeeping of the funds described and their delivery to the association after the issuance of a certificate of incorporation and after bonding of the officers of the corporation. In the event of failure to complete organization, the bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the expense fund. The incorporators, before a certificate of incorporation is issued, shall pay to the chairman in cash, labor, or services actually performed an aggregate amount of at least $500,000, including that part of the original subscription paid by the chairman, as subscriptions to the savings accounts of the proposed association.

History: En. Sec. 27, Ch. 5, L. 1983.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

32-2-233. Expense fund for mutual association. (1) In addition to their subscriptions to savings accounts, the incorporators shall create an expense fund of not less than one-half of the minimum amount of savings account subscriptions required to be paid in under this chapter. The expense fund shall be used to pay the expenses of organizing the association, and its operating expenses may be paid from the fund until such time as its net income is sufficient to pay such earnings as may be declared and paid or credited to its savings account holders from sources available for payment of earnings. Before a certificate of incorporation is issued, the incorporators shall deposit to the credit of the chairman of the incorporators the amount of the expense fund, in cash. The amounts contributed to the expense fund by the incorporators shall not constitute a liability of the association except as otherwise provided.

(2) Contributions made by the incorporators and others to the expense fund may be repaid pro rata from the net income of the association after provision for statutory reserves and declaration of earnings of not less than 2% on savings accounts. If the association is liquidated before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended shall be repaid to the contributors pro rata, after the payment of the expenses of liquidation, creditors, and withdrawal value of all savings accounts. The books of the association shall reflect the expense fund. The contributors to the expense fund shall be paid earnings on the amounts paid in by them at the times earnings are regularly distributed to savings account holders; and for this purpose, the contributions shall in all respects be considered as savings accounts of the association.

History: En. Sec. 28, Ch. 5, L. 1983.

32-2-234 through 32-2-240 reserved.

32-2-241. Organization of capital stock associations. The incorporators of a capital stock association shall appoint one of their number as chairman of the incorporators, and the chairman shall procure from a surety company or other surety acceptable to the department a surety bond in an amount at least equal to the sum of the amount of capital stock contributions and the additional amounts described in 32-2-242. The bond shall name the department as obligee and shall be delivered to it. The bond shall assure the safekeeping of the funds described and their delivery to the association after the issuance of the certificate of incorporation and the bonding of the officers. In the event of the failure to complete organization, the bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the paid-in surplus. Before a certificate of incorporation is issued, the subscribers shall pay to the chairman, in cash, labor, or services actually performed, the capital of such association. The capital shall be the sum of the par or initially stated value of all shares of voting capital stock. Each share of capital stock shall entitle the holder of the share to one vote. The minimum required capital is $500,000.

History: En. Sec. 30, Ch. 5, L. 1983.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Business corporations — shares, Title 35, ch. 1, part 6.

32-2-242. Capital stock association — surplus fund — verification statement. (1) In addition to the minimum capital required, the subscribers shall pay an amount equal to not less than 25% of the par or initially stated value of the stock subscribed, which shall be credited to paid-in surplus and may be used to offset losses. The minimum capital and surplus may be used for the reserves required by law and as may be permitted by the board of directors.

(2) Prior to the issuance of a certificate by the department, the incorporators of a proposed association shall file with the department a statement

in the form and containing supporting data and proof as the department may require. The statement shall verify that the entire capital and paid-in surplus has been unconditionally paid in and that the funds representing the capital and paid-in surplus, less amounts of the paid-in surplus expended for land, building, supplies, fixtures, equipment, and organization, are on hand.

History: **En. Sec. 31, Ch. 5, L. 1983.**

32-2-243. Issuance of capital stock. (1) As of the date the corporate existence of a capital stock association begins, the association shall issue such capital stock as necessary to satisfy the minimum capital requirements of 32-2-241 and such additional capital stock as may be approved for issuance by the board of directors up to the amount authorized in the certificate of incorporation. Once the amount of stock authorized in the certificate of incorporation has been issued, no other shares may be issued except as otherwise authorized in this chapter. The capital stock of an association, when issued, shall constitute permanent capital and may not be retired or withdrawn, except as otherwise provided, until all liabilities of the association, including the withdrawal value of all savings accounts, have been satisfied in full and until outstanding capital certificates have been retired.

(2) An association may issue shares of common stock and preferred stock, with or without par value, and such common and preferred stock may be divided into classes and the classes into series.

History: **En. Sec. 32, Ch. 5, L. 1983.**

32-2-244. Restrictions on capital stock. (1) The consideration for the issuance of capital stock shall be paid in cash except for stock issued pursuant to:

(a) the incorporation of the association;

(b) an employee stock option plan;

(c) a plan of merger, consolidation, or conversion from a mutual to a stock association; or

(d) any other type of reorganization that has been approved by the department.

(2) The par value or stated value of stock issued pursuant to subsections (1)(a) through (1)(d) shall be maintained as the permanent capital of the association, and any additional amount paid in shall be credited to paid-in surplus.

(3) The aggregate par value or stated value of all outstanding shares of capital stock shall be the permanent capital of the association, and except as otherwise provided by this chapter, such capital stock may not be retired until final liquidation of the association. An association may not reduce the par or stated value of its outstanding capital stock without first obtaining the written approval of the department. The department shall withhold its approval if the reduction will cause the par or stated value of outstanding capital stock to be less than the minimum required by this chapter or will result in less than adequate net worth, as the department in its discretion may determine. An association may not retire any part of its capital stock without the approval of the department.

History: **En. Sec. 33, Ch. 5, L. 1983.**

32-2-245. Purchase of stock of deceased stockholder. An association may purchase its capital stock from the personal representative of a deceased stockholder upon the written approval of the department. Upon obtaining written approval, an association may contract with a living stockholder for a purchase of his stock upon his death. Any such purchase shall be for a price and upon such terms and conditions as may be agreed upon by the association and the stockholder or personal representative. The purchase of a deceased stockholder's stock may not reduce the net worth accounts of the association to an amount less than required by law or by any approved insurer of the association's savings accounts. An association agreeing with a stockholder to purchase his capital stock upon his death may purchase insurance on the life of the stockholder to fund or partially fund such purchase. Any stock purchased under this section may be resold by the association at a price and upon such terms and conditions as the board of directors may approve, or may be retired. If the stock is to be resold, the association shall file notice with the department disclosing the price, terms, and conditions of the proposed resale.

History: En. Sec. 34, Ch. 5, L. 1983.

32-2-246 through 32-2-250 reserved.

32-2-251. Mutual and capital stock conversions. (1) Any mutual association may convert to a capital stock association and any capital stock association may convert to a mutual association in accordance with the provisions of this section and 32-2-252 through 32-2-257.

(2) Any applicant seeking to convert its corporate form pursuant to this section and 32-2-252 through 32-2-257 shall first obtain approval of a plan of conversion by a resolution adopted by a two-thirds majority vote of the total number of directors authorized for the association.

History: En. Sec. 35, Ch. 5, L. 1983.

32-2-252. Department approval. (1) Upon approval of a plan of conversion by the board of directors, the plan and the resolution approving it shall be submitted to the department. The department shall approve the plan of conversion after appropriate examination, if it finds that:

(a) the plan of conversion is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and public are adequately protected; and

(c) the converting applicant has complied with the provisions of 32-2-251 through 32-2-257.

(2) If the department approves the plan of conversion, the approval, which shall be in writing, shall be sent to the home office of the applicant. To cause the applicant to conform with the requirements of this chapter, the approval may prescribe terms and conditions, to be fulfilled either before or after the conversion.

(3) If the department disapproves the plan of conversion, its objections shall be sent in writing to the home office of the applicant. The applicant shall be afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. If the department disapproves the resubmitted plan, written notice of the final disapproval shall be sent by certified mail to the applicant's home office.

History: En. Sec. 36, Ch. 5, L. 1983.

32-2-253. Submission to members or stockholders. (1) If the department has approved a plan of conversion pursuant to 32-2-252, the plan shall be submitted for adoption to the members or stockholders of the association for a vote at a meeting called for that purpose. The plan must be approved by:

(a) members of a mutual association representing two-thirds of the withdrawable deposits, present in person or by proxy at the meeting; or

(b) stockholders of a capital stock association holding two-thirds of the capital stock, represented in person or by proxy at the meeting.

(2) If the plan is approved, action shall be taken to amend the articles of incorporation and bylaws as necessary, elect directors and officers, and take any other action as is required or appropriate for the type of association into which the applicant will be converted. A certified report of the proceedings shall be filed promptly with the department.

History: En. Sec. 37, Ch. 5, L. 1983.

32-2-254. Conversion of mutual to capital stock association — mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of organization:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The plan shall specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock shall be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion shall be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either directly or indirectly, as security for a loan or other credit advance to facilitate its own purchase. Each account holder must have the right for a period of 60 days to purchase a proportionate share of the stock at a price equal to the initial stated value thereof. Any stock remaining unsubscribed shall, during the succeeding 60-day period, be offered for sale to those savings account holders of record who have purchased their proportionate share during the initial period. Any stock remaining unsubscribed may be offered for sale to others or transferred to others in consideration for labor or services actually performed in the conversion process.

(4) The record date for determining savings account holders' rights to distribution under subsection (3) shall be set by the converting association's board of directors but may not be less than 120 days prior to the date of approval of the conversion plan by the directors.

(5) The conversion plan shall make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts are to be disposed of or retained.

(6) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257.

History: **En. Sec. 38, Ch. 5, L. 1983.**

32-2-255. Conversion of capital stock to mutual association — mandatory plan requirements. The following requirements are mandatory in any plan of conversion from the capital stock form to a mutual form of association:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The conversion plan shall specify how and in what amount the return of capital to each class of stockholder in the form of an exchange of stock for savings accounts shall be effectuated.

(3) The plan shall provide for the allocation of voting rights to the holders of savings accounts and the manner in which such rights may be exercised.

(4) The plan shall make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts shall be disposed of or retained.

(5) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of 32-2-251 through 32-2-257.

History: **En. Sec. 39, Ch. 5, L. 1983.**

32-2-256. Issuance of certificate — continuance of entity. (1) If the department determines that a conversion proceeding has been completed in accordance with the requirements of 32-2-251 through 32-2-257, it shall issue to the applicant a certificate of conversion. The conversion does not become effective until the issuance of the certificate.

(2) Upon the issuance to the applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate but shall be treated as a continuation of the entity so converted. All property of the converted applicant, of whatever kind, and any benefit pertaining to it vest in the converted applicant without any further action, to the same extent as possessed by the converting applicant.

History: **En. Sec. 40, Ch. 5, L. 1983.**

32-2-257. Continuance of rights and obligations. A converted applicant, upon issuance of the certificate of conversion, continues to have and succeeds to all the rights, obligations, and relations of the converting applicant. All pending actions and other judicial proceedings to which the converting applicant was a party may not be abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree that might have been rendered for or against the converted applicant prior to the conversion may be rendered for or against it after the conversion.

History: **En. Sec. 41, Ch. 5, L. 1983.**

32-2-258 through 32-2-260 reserved.

32-2-261. Foreign associations — requirements. (1) An association, as defined in 32-2-103, organized under the laws of any other state, of the United States, or of any foreign government shall, before doing business in this state, file with the secretary of state and the department a duly authenticated copy of their charter, articles of incorporation, or articles of agreement and also a statement, verified by oath of the president and secretary of the corporation or managing officials if other than a corporation and duly verified, showing:

(a) the name of the association and the location of its principal office or place of business outside this state and the location of the place of business or principal office in this state;

(b) the names and residences of the officers, trustees, or directors;

(c) the amount of capital stock, if any, and savings liability;

(d) the amount of capital invested in the state of Montana.

(2) The association shall also file, at the same time and in the same offices, a certificate, signed by its president, vice-president, or other acting head and by its secretary, if there is one, certifying that the association has consented to all the license laws and other laws of this state relative to foreign associations and has consented to be sued in the courts of this state upon all causes of action arising against it in this state and that service of process may be made upon a citizen of this state, whose name and place of residence shall be designated in the certificate. Service of process on that agent is valid service on the association.

History: **En. Sec. 29, Ch. 57, L. 1927; re-en. Sec. 6355.30, R.C.M. 1935; amd. Sec. 80, Ch. 431, L. 1975; R.C.M. 1947, 7-131; amd. Sec. 10, Ch. 5, L. 1983; MCA 1981, 32-2-221; redes. 32-2-261 by Code Commissioner, 1983.**

Cross-References

Laws of other states — reciprocity, 32-2-105.

Business corporations — foreign corporations, Title 35, ch. 1, part 10.

32-2-262. Consent of agent. The written consent of the person so designated to act as agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof or of a consent executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it.

History: En. Sec. 30, Ch. 57, L. 1927; re-en. Sec. 6355.31, R.C.M. 1935; R.C.M. 1947, 7-132; Sec. 32-2-222, MCA 1981; redes. 32-2-262 by Code Commissioner, 1983.

Cross-References

Creation of agency, Title 28, ch. 10, part 2.

32-2-263. Contracts void if made before compliance with law. If any such foreign association shall attempt or commence to do business in this state without having first filed said statement, certificate, and consent required by this chapter or without complying with any or all of the laws of Montana relating to the payment of fees or licenses, no contract made by them or any agent or agents thereof during said time shall be enforceable by them until the foregoing provisions have been complied with.

History: En. Sec. 31, Ch. 57, L. 1927; re-en. Sec. 6355.32, R.C.M. 1935; R.C.M. 1947, 7-133; Sec. 32-2-223, MCA 1981; redes. 32-2-263 by Code Commissioner, 1983.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

32-2-264. Shares of stock and savings accounts subject to attachment. The stock or savings accounts of such foreign associations doing business in this state shall be subject to attachment in the same manner as now provided by law in the case of domestic associations.

History: En. Sec. 32, Ch. 57, L. 1927; re-en. Sec. 6355.33, R.C.M. 1935; R.C.M. 1947, 7-134; amd. Sec. 11, Ch. 5, L. 1983; MCA 1981, 32-2-224; redes. 32-2-264 by Code Commissioner, 1983.

Cross-References

Prejudgment attachment — corporate stock, 27-18-410.

32-2-265 through 32-2-270 reserved.

32-2-271. Consolidation and transfer — branching prohibited. (1) Only building and loan associations organized and chartered under the laws of the state of Montana may, with the approval of the department, consolidate and become incorporated in one body, with or without any dissolution or division of the funds or property of any of them. Any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors and ratified by a two-thirds vote of the shares or members owning at least two-thirds of the withdrawable deposits in the association, present and voting in person or by proxy at a special meeting or meetings of the stockholders or members of the respective associations convened for that purpose, upon notice given as provided by law; the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

(2) Branching by merger or branching otherwise between a building and loan association organized and chartered under the laws of Montana and a building and loan association organized and chartered under the laws of any other state is prohibited. Branching de novo in Montana by a foreign-chartered building and loan association is prohibited.

(3) Insofar as this section limits or reduces the rights, powers, or privileges of building and loan associations previously granted by law, it shall apply only to proposed consolidations or mergers of associations which are initiated by action taken by their board of directors and shareholders subsequent to April 14, 1977.

History: (1), (2)En. as Subd. 22, 7-113, by Sec. 1, Ch. 168, L. 1931; repealed by Sec. 4, Ch. 11, L. 1933; re-en. Sec. 1, Ch. 11, L. 1933; Sec. 7-113(22), R.C.M. 1947; amd. and redes. 7-113.2 by Sec. 73, Ch. 431, L. 1975; amd. Sec. 1, Ch. 363, L. 1977; Sec. 7-113.2, R.C.M. 1947; (3)En. 7-113.3 by Sec. 2, Ch. 363, L. 1977; Sec. 7-113.3, R.C.M. 1947; R.C.M. 1947, 7-113.2, 7-113.3; amd. Sec. 12, Ch. 5, L. 1983; MCA 1981, 32-2-231; redes. 32-2-271 by Code Commissioner, 1983.

Cross-References

National bank powers extended to state banks, 32-1-362.

Consolidation or merger of banks, 32-1-371.

Branch bank prohibited — exceptions, 32-1-372.

Laws of other states — reciprocity, 32-2-105.

Credit unions — merger, 32-3-322.

Part 3

Department of Commerce Responsibility

Part Cross-References

Special examination of association by Department of Commerce, 32-1-215.

32-2-301. Examinations by department. The department shall examine all building and loan associations doing business in this state at least once a year. Also, when the holders of 10% of the subscribed stock or members holding 10% of the withdrawable deposits of an association file a written application with the department requesting it to make a special examination of an association, it shall make the examination immediately. The expense of the examiner making the examination shall be paid by the association examined, and the examiner's finding shall be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this chapter.

History: En. Sec. 23, Ch. 57, L. 1927; re-en. Sec. 6355.24, R.C.M. 1935; amd. Sec. 1, Ch. 81, L. 1955; amd. Sec. 77, Ch. 431, L. 1975; R.C.M. 1947, 7-125; amd. Sec. 13, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — examination and supervision by department, 32-1-211.

Special examination of association by department, 32-1-215.

32-2-302. Reports and accounts prescribed by department. The department may prescribe and supervise a uniform system of reports and accounting for all associations. The department shall have access to and may compel the production of all books, papers, securities, and moneys of any association under examination. It may administer oaths to and examine the officers and agents of the association and its affairs.

History: En. Sec. 24, Ch. 57, L. 1927; re-en. Sec. 6355.25, R.C.M. 1935; amd. Sec. 78, Ch. 431, L. 1975; R.C.M. 1947, 7-126.

Cross-References

Oaths, Title 1, ch. 6.

Production of documents for inspection, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Banks and trust companies — reports to Department of Commerce, 32-1-231.

32-2-303. Reports of condition — contents — publication. When requested to do so by the department, a building and loan association shall make to the department a report of condition, according to the form which may be prescribed by the department. The report shall be verified by the oath or affirmation of the president, vice-president, or secretary of the association and attested by the signature of at least two of the directors. The report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified and shall be transmitted to the department within 5 days after the receipt of a request or requisition for it from the department and in a form which may be required by the department. It shall be published as soon as possible in a newspaper in the place where the association is established or, if there is no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association. Proof of publication shall be furnished at the times and in the manner which may be required by the department.

History: En. Sec. 25, Ch. 57, L. 1927; re-en. Sec. 6355.26, R.C.M. 1935; amd. Sec. 79, Ch. 431, L. 1975; R.C.M. 1947, 7-127.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Banks and trust companies — reports to Department of Commerce, 32-1-231.

Banks and trust companies — special reports to Department, 32-1-233.

32-2-304. Removal of directors, officers, or employees. Any director, officer, or employee of any association found by the department after examination to be dishonest shall be removed from office by the board of directors of such association on the written order of the department, and if the directors neglect or refuse to remove such director, officer, or employee, in event any losses accrue to such association thereafter by reason of the dishonesty of such director, officer, or employee, such written order of the department shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same as herein provided in any action brought against them or any of them for recovery of such losses.

History: En. Sec. 26, Ch. 57, L. 1927; re-en. Sec. 6355.27, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-128.

Cross-References

Negligence, 27-1-701, 27-1-702.

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

Removal of directors, 32-2-207.

32-2-305. Department to approve contracts paying income to person other than association — penalty for not securing. No fiscal agency or promotion contract or any other contract or arrangement, whereby the membership fee or any other income properly payable to the association, or any part thereof, is payable to an agent or other contracting party or otherwise than to the association or whereby any part of the business of the association or the management or conduct of its affairs or the expense of them is contracted to another, may be entered into or allowed until it has been submitted to the department and by it approved in writing. That contract may not be extended without the department's approval. The contract or the extension of the contract not first approved is void. A person operating under the contract or extension not first approved or taking or receiving income properly payable to the association without approval is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 154, L. 1931; re-en. Sec. 6355.8, R.C.M. 1935; amd. Sec. 71, Ch. 431, L. 1975; R.C.M. 1947, 7-108.

Cross-References

Contracts generally, Title 28, ch. 2 and 3.

Contracts void if made before compliance with law, 32-2-263.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty specified, 46-18-212.

32-2-306. Department report. The department shall preserve in permanent form a full record of its proceedings, including a concise statement of each association examined, and it shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with those suggestions as it considers expedient. The report shall also include the information contained in the statement required of the association, arranged in tabulated form.

History: En. Sec. 36, Ch. 57, L. 1927; re-en. Sec. 6355.37, R.C.M. 1935; amd. Sec. 82, Ch. 431, L. 1975; R.C.M. 1947, 7-138.

Cross-References

Banks and trust companies — examination and supervision by department, 32-1-211.

Annual statements, 32-2-412.

32-2-307. Reports and examinations by department confidential. (1) An employee or agent of the department who fails to keep secret the facts and information obtained in the course of an examination or by reason of his official position, except when the public duty of that officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of the association shall be removed from office and shall be fined not more than $500 or imprisoned in the penitentiary not less than 2 years or more than 5 years, or both.

(2) Nothing in this section prevents the proper exchange of information relating to building and loan associations and their business with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of an individual, association, or company be disclosed.

History: En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; re-en. Sec. 6355.46, R.C.M. 1935; amd. Sec. 84, Ch. 431, L. 1975; R.C.M. 1947, 7-147(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Banks and trust companies — confidentiality of reports — penalties, 32-1-234.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.
False swearing, 45-7-202.
Unsworn falsification to authorities, 45-7-203.
Tampering with public records or information, 45-7-208.

32-2-308. Membership in federal home loan bank. (1) An association, the officers or agents thereof, and the department may do anything necessary to enable a building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States.

(2) The department, on request of any federal home loan bank, shall furnish that bank any information it may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to an association which is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from a federal home loan bank.

History: En. Sec. 45, Ch. 57, L. 1927; amd. Sec. 2, Ch. 11, L. 1933; re-en. Sec. 6355.46, R.C.M. 1935; amd. Sec. 84, Ch. 431, L. 1975; R.C.M. 1947, 7-147(part).

Cross-References

Change from state to national bank, 32-1-361.
Banks allowed to join federal reserve bank, 32-1-373.

32-2-309. Insolvency or impairment of association — powers of department. (1) When it appears to the department that the affairs of a building and loan association are in an unsound condition or that it is conducting its business in an unsafe or unlawful manner, the department may take possession of all books, records, and assets of every description of the association and retain possession of them pending the further proceedings specified in this section.

(2) If the board of directors, secretary, or person in charge of the association refuses to permit the department to take possession, the department shall communicate that fact to the attorney general. The attorney general shall at once institute the proceedings necessary to place the department in immediate possession of the property of the association.

(3) Upon taking possession of the effects of the association, the department shall prepare a full and true statement of the affairs and condition of the association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues, and claims belonging to it and pay the immediate and reasonable expenses of the department's trust.

(4) When the condition of the association has been fully ascertained and it appears that the affairs of the association are in fact in an unsound condition, the department shall at once notify, in writing, the board of directors of the association of its decision, giving them 20 days in which to restore the affairs of the association to sound condition.

(5) Meanwhile, the department shall remain in charge of the books, records, and assets of every description of the association, shall attend or be represented at all directors and stockholders or members meetings held, and shall suggest those steps it considers necessary to restore the association to a sound condition.

(6) If the association is not restored to a sound condition within 20 days, the department shall report the facts to the attorney general. The attorney general shall institute proceedings in the district court of the county in which the association has its principal place of business for the appointment of the department as receiver.

(7) As receiver, the department may collect all moneys due the association and may do those other acts which are necessary to conserve its assets and business, and it shall liquidate the association's affairs. The department may, except as otherwise limited by the terms of this chapter, do any acts necessary or, in its discretion, desirable for the protection of the property and assets of the association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors or for the resumption of business of the association where that is practicable or desirable. The department may institute in its own name or in the name of the association those legal proceedings it considers expedient for those purposes.

(8) By applying to the district court of the county in which the association is located, or to the judge thereof in chambers, the department may, upon sufficient showing of cause, obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell any of the assets. The sale may be made to stockholders, members, officers, directors, or others interested in the association, on consent of the court. On the proceedings the association shall be made a party by notice issued on order of the court or judge, in place of summons but served in like manner. The hearing of the application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the association has had 5 days' notice of the application.

History: En. Sec. 48, Ch. 57, L. 1927; re-en. Sec. 6355.49, R.C.M. 1935; amd. Sec. 86, Ch. 431, L. 1975; R.C.M. 1947, 7-150; amd. Sec. 14, Ch. 5, L. 1983.

Cross-References

Receivers, Title 27, ch. 20.

Insolvency defined, 30-1-201, 31-2-202.

Bank placed in Department's possession, 32-1-511.

Insolvent banks — power of Department, 32-1-562.

Voluntary liquidation and settlement, 32-2-431.

Reorganization of associations under liquidation, 32-2-432.

Part 4

Operation and Regulation

Part Cross-References

Deposits of public funds in building and loan associations, Title 17, ch. 6, part 1.

Consumer credit transactions, interest rates, rights and remedies of parties, Title 31.

32-2-401. Powers and duties of building and loan associations. A building and loan association may:

(1) have continual succession by its corporate name;

(2) sue and be sued in any court;

(3) make and use a common seal and alter it at pleasure;

(4) appoint those officers or agents the business of the corporation requires and pay them suitable compensation;

(5) enter into obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation;

(6) issue stock to stockholders and savings certificates to members on the terms and conditions the articles of incorporation and bylaws provide;

(7) assess and collect from members interest on loans at the times and in the amount provided for in the articles of incorporation and bylaws;

(8) permit members to withdraw all or part of their savings at the times and upon the terms as the articles of incorporation and bylaws may provide;

(9) cancel savings certificates upon which all credits have been withdrawn or upon which loans have been canceled or savings upon which no payments have been made for a period of 6 months, by returning to the members all credits, if any, and reissue the certificates as new savings certificates;

(10) issue savings certificates to minors and permit them to be withdrawn as other savings certificates. The receipt by the minor is a valid acquittance if his rights have been fully secured to him.

(11) acquire, hold, encumber, and convey that real estate and personal property necessary for the transaction of its business or necessary to enforce or protect its securities;

(12) borrow money, only when necessary and not exceeding 20% of its assets, except when borrowing from the federal home loan bank as provided in 32-2-405, and issue its promissory note for the loan;

(13) make loans to members on the security of the savings accounts of the association and also on their notes secured by first mortgages on improved real estate, including suburban homes or farm lands but not on mining property, for not to exceed 75% of the actual value of the real estate and upon the terms and conditions which may be provided in the articles of incorporation and bylaws;

(14) cancel those loans and release the securities on those terms the board of directors may provide;

(15) invest the money of the association in accordance with 32-2-406;

(16) loan money to other building and loan associations;

(17) make distribution of all interest and dividends earned after payment of expenses and setting aside a sum for the contingent funds as provided in this chapter;

(18) amend its articles of incorporation by changing the name, place of business, the number of directors, and increase or decrease the capital stock, and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department.

(19) dissolve the corporation in accordance with the provisions of this chapter;

(20) provide, by articles of incorporation and bylaws adopted or amended by its board of directors, for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) exercise those other powers which are necessary and proper to enable the corporation to carry out the purpose of its organization.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 15, Ch. 5, L. 1983; amd. Sec. 1, Ch. 243, L. 1989.

Cross-References

Investments in certain federally guaranteed bonds authorized, 7-15-4505.

Commercial bank defined, 32-1-105.

Savings bank defined, 32-1-106.

Trust company defined, 32-1-107.

Building and loan associations — purpose — definitions, 32-2-101.

Bylaws, 32-2-204.

Capital stock requirements, 32-2-205.

Minor not to disaffirm certain obligations, 41-1-306.

32-2-402. Limit on interest and penalties. (1) Interest not exceeding the lawful contract rate may be charged and collected on delinquent stock payments when those unpaid payments are credited with dividends. The interest shall in no event be at a rate exceeding the rate percent of the dividend declared on the same unpaid stock payments.

(2) An association may not charge or collect from a stockholder, member, or borrower any fines, premiums, or penalties of any kind; except that a late payment penalty not to exceed $5 may be charged for payments more than 15 days late.

(3) An officer, agent, or employee of an association collecting or attempting to collect a penalty, fine, or premium of any kind, except the late payment penalty, or interest at a rate higher than provided in the note or other evidence of debt or in this chapter is guilty of a misdemeanor.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 5, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983.

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Regulated lender defined, 31-1-111.

Interest rate limitation exemption — regulated lenders, 31-1-112.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — when no penalty is specified, 46-18-212.

32-2-403. Statement of interest rates — canceling loans. (1) Where the promissory note or other written evidence of the loan made by a building and loan association requires the payment of the loan or total aggregate sum of principal and interest in periodic installments, the promissory note or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment. When the note or other evidence of debt does not require the payment of the loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest charged the borrower.

(2) A borrower may have his loan canceled by paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, and the dividends credited.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch.

164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Regulated lender defined, 31-1-111.

Interest rate limitation exemption — regulated lenders, 31-1-112.

32-2-404. Savings account withdrawal. (1) No charge or fee, except as provided in this section, may be made against a member who withdraws his savings, after having given 30 days' notice of the withdrawal. No fine of any description may be made upon the value of that savings account because of the withdrawal. A member who withdraws his savings or whose savings account is matured is entitled to receive all sums paid in and all interest declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the amount of his deposit, and less a pro rata share of all losses, if any, which have occurred. No other fine or assessments may be made against the savings.

(2) Applications for withdrawal shall be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured savings and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than $100 in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part); amd. Sec. 16, Ch. 5, L. 1983.

Cross-References

Credit unions — members who leave field, 32-3-308.

32-2-405. Pledging association assets. (1) The assets and securities of an association may not be pledged to secure its borrowed money or for any other purpose without the consent of the department. However, if the department determines that it is advisable to pledge assets in order that funds may be secured, it may authorize the pledging. The margin of security pledged may not exceed 25% of the funds so borrowed except when funds are borrowed from the federal home loan bank.

(2) An association may borrow money from the federal home loan bank upon the terms required by the federal home loan bank, may execute the promissory note of the corporation for the loan, and may pledge any of the assets of the corporation to secure the repayment of the loan, with interest, in accordance with the Federal Home Loan Bank Act and the rules adopted under it.

History: En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; R.C.M. 1947, 7-113(part).

Cross-References

Security for deposit of public funds, 17-6-103.

Banks and trust companies — extent assets may be pledged, 32-1-411.

Membership in federal home loan bank, 32-2-308.

32-2-406. Investments. (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate that has been sold under contract, including suburban homes or farm lands but not including mining property. However, the total amount remaining invested in real estate, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount invested in real estate may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property purchased, whichever is the lesser.

(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations.

History: (1), (2)En. Sec. 12, Ch. 57, L. 1927; amd. Sec. 1, Ch. 163, L. 1929; amd. Sec. 1, Ch. 11, L. 1933; re-en. Sec. 6355.13, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1939; amd. Sec. 1, Ch. 164, L. 1943; amd. Sec. 1, Ch. 337, L. 1975; amd. Sec. 72, Ch. 431, L. 1975; Sec. 7-113, R.C.M. 1947; (3)En. Sec. 1, Ch. 5, Ex. L. 1933; re-en. Sec. 5309.35, R.C.M. 1935; amd. Sec.

1, Ch. 37, L. 1935; amd. Sec. 1, Ch. 24, L. 1937; Sec. 35-142, R.C.M. 1947; R.C.M. 1947, 7-113(part), 35-142(part); amd. Sec. 6, Ch. 36, L. 1979; amd. Sec. 1, Ch. 154, L. 1979; amd. Sec. 5, Ch. 137, L. 1989; amd. Sec. 2, Ch. 243, L. 1989.

Cross-References

Coal severance tax bonds — legal investments, 17-5-718.

Highway revenue bonds — legal investments, 17-5-930.

Economic development bonds as legal investments, 17-5-1525.

Municipal finance consolidation bonds as legal investments, 17-5-1628.

Investments of financial institutions, 32-1-424.

Credit unions — investment of funds, 32-3-701.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-2-407. Real estate loans limited by congress. Building and loan associations and savings and loan associations, organized and operating under the laws of the state of Montana, may, in addition to any loan or investment permitted prior to July 1, 1963, make any real estate loan upon terms and conditions set by the department but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

History: En. Sec. 1, Ch. 263, L. 1963; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-113.1; amd. Sec. 2, Ch. 154, L. 1979.

Cross-References

Authority of state banks to make real estate loans, 32-1-430.

Limitation on real estate loans by state banks, 32-1-431.

National Housing Act loans, Title 32, ch. 2, part 5.

32-2-408. Bonds of officers, agents, and employees. The board of directors of every building and loan association shall require that all officers, agents, and employees of building and loan associations whose duties include the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers be bonded. The board of directors shall by an order entered upon the minute books of the board designate all the officers, agents, and employees to be so bonded and the amount of bonds to be given by each. The action as to the personnel and amount and the surety company or sureties shall be subject to approval by the department. The bonds shall be in a form which shall be provided and approved by the department, and the bonds shall be approved by the president of the building and loan association and his action reported to the board of directors. All bonds required by this section shall be kept in the custody of the building and loan association subject to inspection by the department. As far as possible, a bond may not be placed in the custody of the officer, agent, or employee for whom it is given.

History: En. Sec. 16, Ch. 57, L. 1927; amd. Sec. 1, Ch. 5, L. 1933; re-en. Sec. 6355.17, R.C.M. 1935; amd. Sec. 74, Ch. 431, L. 1975; R.C.M. 1947, 7-118.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Banks and trust companies — bonding of employees, 32-1-461.

32-2-409. Employment of agents — licenses and revocation thereof. (1) It is unlawful for a building and loan association doing business in this state to employ an agent for the purpose of soliciting loans or the sale of stock in that association unless he is first licensed by the department. An agent representing an association, foreign or domestic, doing business in this state may not solicit loans or the sale of stock of any association unless he is first licensed by the department.

(2) A license may not be issued to an applicant for an agent's license until the applicant has first filed with the department a written request from the building and loan association desiring to employ him as agent and has filed an application upon a form prescribed and furnished by the department. The application must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last 12 months, and other information the department may require. If the department is satisfied that the applicant is a fit and proper person to engage in the solicitation of loans or the sale of stock, it shall issue the license. The department, upon 10 days' notice to an agent and after a hearing, may revoke the license of an agent upon the following grounds:

(a) misrepresentation;

(b) conviction in any court for violation of the criminal statutes;

(c) evidence sufficient to convince the department that the agent is not a fit and proper person to sell building and loan association stock.

(3) The department shall revoke the license of an agent upon the request of the association employing the agent.

(4) Each license provided for in this section expires on December 31 of each year, and for issuance or renewal the department shall require a fee of $2.

History: En. Sec. 17, Ch. 57, L. 1927; re-en. Sec. 6355.18, R.C.M. 1935; amd. Sec. 75, Ch. 431, L. 1975; R.C.M. 1947, 7-119.

Cross-References

Agency, Title 28, ch. 10.

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Reports and accounts prescribed by department, 32-2-302.

32-2-410. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least 5% of the net earnings shall be set aside each year for such fund until it reaches at least 5% of the book value of the savings deposits. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below 5% of the savings deposits, it shall be replenished by annual appropriations of at least 5% of the earnings, as hereinbefore provided, until it again reaches said amount.

History: En. Sec. 18, Ch. 57, L. 1927; re-en. Sec. 6355.19, R.C.M. 1935; R.C.M. 1947, 7-120; amd. Sec. 17, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — reserve requirements, 32-1-455.

32-2-411. Payment of expenses — losses — dividends — reserve fund. (1) All expenses of any such association shall be paid out of the earnings only, in such manner as may be provided in its bylaws. The charges incident to a loan, if paid by the borrower, shall be deemed a part of the current expenses.

(2) Associations so desiring may annually or semiannually credit to a reserve fund the net earnings remaining after the payment of expenses and dividends and after crediting the contingent fund with the amount required by law, provided the amount so credited to the reserve fund in any fiscal year shall not exceed 1% of the book value of the outstanding stock. The reserve fund shall not exceed 5% of the book value of the outstanding stock. The reserve fund so created may be used for the payment of dividends, provided:

(a) the amount of the reserve fund so used shall not exceed 1% of the book value of the outstanding stock in any year; and

(b) that should the contingent fund of an association become exhausted, then no part of the reserve fund may be used for the payment of dividends and in the discretion of such association such reserve fund or the part thereof it shall deem necessary shall be credited to the contingent fund.

(3) Dividends shall be declared semiannually from the net earnings of the association and shall be paid or credited to all stockholders at such time and in such manner as provided in the constitution and bylaws.

(4) Losses in excess of the contingent fund and reserve fund shall be assessed pro rata in the same proportion and manner on all stockholders, to the extent only of their stock credits in such association.

History: En. Sec. 19, Ch. 57, L. 1927; amd. Sec. 1, Ch. 167, L. 1931; re-en. Sec. 6355.20, R.C.M. 1935; R.C.M. 1947, 7-121.

Cross-References

Banks and trust companies — dividends, surplus, losses, and bad debts, 32-1-452.

Banks and trust companies — reserve requirements, 32-1-455.

Shares of stock subject to attachment, 32-2-264.

32-2-412. Annual statements. Every building and loan association doing business in this state shall annually, on June 30 or within 20 days thereafter, make a full detailed report, in writing, of the affairs and business of the association for the fiscal year ending on said June 30, showing its financial condition at the end of said year.

History: En. Sec. 21, Ch. 57, L. 1927; re-en. Sec. 6355.22, R.C.M. 1935; R.C.M. 1947, 7-123.

Cross-References

Department report, 32-2-306.

32-2-413. Form of statement — where filed. The statement shall be in such form and contain such information as may be prescribed by the department. It shall be sworn to by the secretary of such association and its correctness attested by at least three directors or an auditing committee appointed by the board of directors. The original shall be filed with the department within 20 days after the close of the fiscal year, and such an abstract thereof as the department may require shall be posted for 60 days in the office or meeting place of such association and also published once in the newspaper published in the town in which the association is located or, if no newspaper is published in the town in which association is located, then in one published nearest thereto in the same county, and such proof of publication shall be furnished at such times and in such manner as may be required by the department.

History: En. Sec. 22, Ch. 57, L. 1927; re-en. Sec. 6355.23, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-124.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

Reports and accounts prescribed by department, 32-2-302.

Department report, 32-2-306.

32-2-414. Interest or commissions not included in profits. Interest or commissions unpaid, although due or accrued, on debts owing to any building and loan association shall not be included in calculation of its profits.

History: En. Sec. 40, Ch. 57, L. 1927; re-en. Sec. 6355.41, R.C.M. 1935; R.C.M. 1947, 7-142.

Cross-References

Reports of condition — contents — publication, 32-2-303.

32-2-415. Limitation on loans. The total liabilities of any person, partnership, or corporation to any association for money borrowed, however secured, including in the liabilities of a partnership, the liabilities of the several members thereof, shall at no time exceed 20% of the amount of the assets of such association.

History: En. Sec. 41, Ch. 57, L. 1927; re-en. Sec. 6355.42, R.C.M. 1935; R.C.M. 1947, 7-143.

Cross-References

Banks and trust companies — limitations on loans, 32-1-432.

Credit unions — loan limit, 32-3-603.

32-2-416. Joint ownership. Any building and loan association may issue savings certificates and shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder or certificate holder.

History: En. Sec. 42, Ch. 57, L. 1927; re-en. Sec. 6355.43, R.C.M. 1935; R.C.M. 1947, 7-144; amd. Sec. 18, Ch. 5, L. 1983.

Cross-References

Joint deposits in investment companies, 32-1-442.

Credit unions — joint ownership of shares, 32-3-505.

Joint interest defined, 70-1-307.

32-2-417. Trust — payment. Whenever any shares of stock shall be purchased or savings deposits made in any building and loan association by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased or savings deposits made.

History: En. Sec. 43, Ch. 57, L. 1927; re-en. Sec. 6355.44, R.C.M. 1935; R.C.M. 1947, 7-145; amd. Sec. 19, Ch. 5, L. 1983.

Cross-References

Trust deposits — payment, 32-1-443.

Credit unions — trust accounts, 32-3-506.

Trust code, Title 72, ch. 33 through 36.

32-2-418. Savings held by minor. Whenever any savings accounts in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the savings accounts shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such savings accounts to the association.

History: En. Sec. 44, Ch. 57, L. 1927; re-en. Sed. 6355.45, R.C.M. 1935; R.C.M. 1947, 7-146; amd. Sec. 20, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — deposit in name of minor, 32-1-444.

Credit unions — minor's accounts, 32-3-504.

Parental control over property of child, 40-6-232.

Enforcement of minor's rights, 41-1-202.

Minor not to disaffirm certain obligations, 41-1-306.

32-2-419. Repealed. Sec. 3, Ch. 243, L. 1989.

History: En. Sec. 46, Ch. 57, L. 1927; re-en. Sec. 6355.47, R.C.M. 1935; R.C.M. 1947, 7-148.

32-2-420. Associations may make loans guaranteed under Servicemen's Readjustment Act of 1944. (1) All building and loan associations organized under the laws of the state of Montana are hereby empowered to make any loan which is guaranteed in whole or in part by the United States or any federal agency or federal instrumentality thereof under the Servicemen's Readjustment Act of 1944 or any amendment thereto, enacted by the congress of the United States, provided such loan shall be secured by either a first or second mortgage on real estate.

(2) Insofar as the provisions of this section are inconsistent with the provisions of any other law governing building and loan associations, the provisions of this section shall control.

History: En. Secs. 1, 2, Ch. 35, L. 1945; R.C.M. 1947, 7-158, 7-159.

32-2-421 through 32-2-430 reserved.

32-2-431. Voluntary liquidation and settlement. (1) With the consent of the department, an association organized under the laws of and doing business in this state, may, if the members or stockholders consider it advisable, go into liquidation. For the purpose of so doing it may, at any regular or called meeting of the members or stockholders, adopt a resolution declaring that the association intends to go into liquidation and discontinue business as a building and loan association. A copy of the resolution, duly certified by the president and secretary of the association, under the seal thereof, shall be transmitted to the department within 10 days after its passage. The department shall then issue its certificate reciting that the resolution has been filed in its office and that the association is in liquidation.

(2) After the filing of the notice, it is unlawful for the association to issue stock or to loan or advance its money to members, shareholders, or any other person.

(3) All of the income and receipts of the association in excess of the actual expense of managing it shall be applied to pay off first the indebtedness and the savings accounts in the association upon which no loans have been made, the same to be paid pro rata, then to pay off the capital stock in the association, pro rata.

(4) The board of directors of the association in liquidation may adopt those rules and make those orders which are just and equitable for the sale and disposition of all property held by the association and for the division of the assets of the association.

(5) The association in liquidation may be examined by and shall be under the supervision of the department.

History: En. Sec. 47, Ch. 57, L. 1927; re-en. Sec. 6355.48, R.C.M. 1935; amd. Sec. 85, Ch. 431, L. 1975; R.C.M. 1947; 7-149; amd. Sec. 21, Ch. 5, L. 1983.

Cross-References

Banks and trust companies — dissolution, closing, and liquidation, Title 32, ch. 1, part 5.

Meetings of stockholders and directors, 32-2-208.

Examinations by department, 32-2-301.

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

32-2-432. Reorganization of associations under liquidation. Any association under voluntary liquidation as provided in 32-2-431 or which may be under the possession of the department as specified in 32-2-309 may resume business as an active building and loan association in the following manner:

(1) The directors of such building and loan association, by and with the approval of the department, may, upon such terms as may be agreed upon and ratified by the members or stockholders of such association, reorganize such association and resume business as an active building and loan association.

(2) Ratification by members or stockholders thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock in a capital stock association or withdrawable deposits in a mutual association voting, either in person or by proxy, shall be sufficient to adopt such proposal.

(3) Notice of such meeting shall clearly indicate the purpose of the meeting.

History: En. Sec. 1, Ch. 4, L. 1935; re-en. Sec. 6355.50, R.C.M. 1935; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 7-151; amd. Sec. 22, Ch. 5, L. 1983.

Cross-References

Meetings of stockholders and directors, 32-2-208.

32-2-433 through 32-2-440 reserved.

32-2-441. Conversion into federal savings and loan associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders or members of any such association or at any special meeting of the shareholders or members of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders or members, by an affirmative vote of the majority of the shareholders or members, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders or members verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders or members, such association shall take any action necessary to make it a federal savings and loan association, and within 10 days after receipt of the federal charter there shall be filed with the department a copy of the charter issued to such association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association certified by or on behalf of the federal home loan bank board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association.

History: En. Sec. 1, Ch. 174, L. 1935; re-en. Sec. 6374.8, R.C.M. 1935; amd. Sec. 31, Ch. 71, L. 1977; R.C.M. 1947, 7-156; amd. Sec. 23, Ch. 5, L. 1983.

Cross-References

Change from state to national bank, 32-1-361.

Meetings of stockholders and directors, 32-2-208.

32-2-442. Effect of conversion of association — powers and privileges. At the time when such conversion becomes effective as hereinbefore provided, said association shall cease to be supervised by this state and all of the property of such association, including all of its right, title, and interest in and to all property of every kind and character whether real, personal, or mixed, shall immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction. Said federal savings and loan association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by it as a state association. Said federal savings and loan association at the time of the taking effect of such conversion shall continue responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place; it being expressly declared that the federal savings and loan association shall be merely a continuation of the state association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

History: En. Sec. 2, Ch. 174, L. 1935; re-en. Sec. 6374.9, R.C.M. 1935; R.C.M. 1947, 7-157.

Cross-References

National bank powers extended to state banks, 32-1-362.

Part 5

National Housing Act Loans

32-2-501. Associations empowered to make loans on securities authorized by National Housing Act. Subject to such regulations as may be prescribed by the federal housing administrator, pursuant to an act of congress cited as the "National Housing Act", approved by the president on June 27, 1934, and all amendments thereto as well as any amendments hereafter duly passed and approved, building and loan associations qualified to do business in this state are hereby empowered to make such loans, secured by mortgages upon real estate, and other advances of credit to members or others, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and members' accounts, and other contracts as are now, or may hereafter be, authorized or provided for by said National Housing Act and any amendments thereof duly passed and approved.

History: En. Sec. 1, Ch. 38, L. 1935; re-en. Sec. 6356.1, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1943; R.C.M. 1947, 7-153; amd. Sec. 24, Ch. 5, L. 1983.

Cross-References

Investments of financial institutions, 32-1-424.

Investments, 32-2-406.

Real estate loans limited by Congress, 32-2-407.

32-2-502. Transactions exempt from operation of state laws. All loans, charges, investments, advances of credit, purchases, sales, contracts for insurance of mortgages and members' accounts, and other contracts made pursuant to the powers granted in 32-2-501 through 32-2-503 shall be exempt from the operation and application of the general statutes of this state in conflict with said National Housing Act and the regulations issued thereunder.

History: En. Sec. 2, Ch. 38, L. 1935; re-en. Sec. 6356.2, R.C.M. 1935; R.C.M. 1947, 7-154; amd. Sec. 25, Ch. 5, L. 1983.

Cross-References

Contracts, Title 28, ch. 2 and 3.

Loans of money — interest rates, Title 31, ch. 1, part 1.

32-2-503. Application of sections. The provisions of 32-2-501 through 32-2-503 shall apply only to loans, advances of credit, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and accounts of members, and other contracts made in connection with and incidental to loans secured by mortgages and to advances of credit, insured or to be insured, and accounts, insured or to be insured, under the provisions of said National Housing Act and amendments thereof duly passed and approved.

History: En. Sec. 3, Ch. 38, L. 1935; re-en. Sec. 6356.3, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1943; R.C.M. 1947, 7-155; amd. Sec. 26, Ch. 5, L. 1983.

CHAPTER 3

CREDIT UNIONS

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Chapter Cross-References

Credit Transactions and Relationships, Title 31.

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Discrimination prohibited in financial transactions, 49-2-101, 49-2-305, 49-2-307, 49-3-206.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Part 1

General Provisions

32-3-101. Short title. This chapter shall be known and may be cited as the "Montana Credit Union Act".

History: En. 14-601 by Sec. 1, Ch. 38, L. 1975; R.C.M. 1947, 14-601.

32-3-102. Definition and purposes. A credit union is a cooperative, nonprofit association, incorporated under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

History: En. 14-602 by Sec. 2, Ch. 38, L. 1975; R.C.M. 1947, 14-602.

Cross-References

Commercial bank defined, 32-1-105.

Savings bank defined, 32-1-106.

Trust company defined — purposes for which may be formed, 32-1-107.

Investment company defined — purposes for which may be formed, 32-1-108.

Building and loan associations — purpose, 32-2-101.

32-3-103. Use of name exclusive. With the exception of a credit union organized under the provisions of this chapter or of any other credit union act or an association of credit unions or a recognized chapter thereof, any person, corporation, partnership, or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be fined not more than $500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from using such words in its name.

History: En. 14-606 by Sec. 6, Ch. 38, L. 1975; R.C.M. 1947, 14-606.

Cross-References

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-3-104. Office facilities. (1) A credit union may change its place of business within this state upon written notice to the department of commerce.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(3) A credit union may maintain, upon prior written notice to the department, additional offices at locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish service to its members.

(4) The department shall approve any additional office unless a compelling reason for disapproval is found by the department. Competition with other financial institutions is not a sufficiently compelling reason for disapproval.

(5) If the department disapproves an additional office, the credit union shall be afforded an opportunity for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing shall be to determine whether a compelling reason exists for disapproval of the additional office.

History: En. 14-607 by Sec. 7, Ch. 38, L. 1975; R.C.M. 1947, 14-607; amd. Sec. 1, Ch. 140, L. 1981; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

32-3-105. Fiscal year. The fiscal year of each credit union organized under this chapter shall end on December 31.

History: En. 14-608 by Sec. 8, Ch. 38, L. 1975; R.C.M. 1947, 14-608.

32-3-106. Instruction in schools. With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state.

History: En. 14-675 by Sec. 75, Ch. 38, L. 1975; R.C.M. 1947, 14-675.

Cross-References

Superintendent of Public Instruction — supervision of schools — powers and duties, 20-3-106.

Instructional assistance by Superintendent of Public Instruction, 20-7-114.

Part 2

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Part Cross-References

Special examination of credit unions by Department of Commerce, 32-1-215.

32-3-201. Director of the department of commerce. (1) The director shall administer the laws of this state relating to credit unions. He may appoint or employ such special assistants, deputies, examiners, or other employees as are necessary for the purpose of administering or enforcing this chapter.

(2) The director may prescribe rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees so collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The director shall, from time to time, issue rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk.

History: En. 14-609 by Sec. 9, Ch. 38, L. 1975; R.C.M. 1947, 14-609; amd. Sec. 5, Ch. 600, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State finance — fund structure, 17-2-102.

Suretyship, Title 28, ch. 11, part 4.

Casualty insurance, Title 33, ch. 23.

32-3-202. Reports. (1) Credit unions organized under this chapter shall report to the director annually on or before February 1 on forms supplied by him for that purpose. Additional reports may be required.

(2) A fine of $5 for each day a report is in arrears shall be levied against the offending credit union unless it is excused for cause by the director.

History: En. 14-610 by Sec. 10, Ch. 38, L. 1975; R.C.M. 1947, 14-610.

Cross-References

Duties of supervisory committee, 32-3-417.

32-3-203. Examinations. (1) The department of commerce shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of the director of the department full access to all books, papers, securities, records, and other sources of information under their control; and for the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination shall be forwarded to the executive officer of each credit union promptly after completion. The report shall contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committeemen shall meet to consider matters contained in the report.

(3) In lieu of making an annual examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit shall be borne by the credit union.

History: En. 14-611 by Sec. 11, Ch. 38, L. 1975; R.C.M. 1947, 14-611; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Banks and trust companies — examination and supervision by department, 32-1-211.

Building and loan associations — examinations by department, 32-2-301.

32-3-204. Records. (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with such rules as the director from time to time prescribes. In prescribing such rules, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the director.

(3) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union.

History: **En. 14-612 by Sec. 12, Ch. 38, L. 1975; R.C.M. 1947, 14-612.**

Cross-References

Destruction of bank records, 32-1-491.

Reproduction of bank records — admissibility in evidence, 32-1-492.

Building and loan associations — reports and accounts prescribed by department, 32-2-302.

32-3-205. Suspension. (1) If it appears that any credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the director of the department of commerce shall issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors shall be given notice by certified or registered mail of such suspension, which notice shall include a list of the reasons for such suspension and/or a list of the specific violations of this chapter.

(2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the director. The credit union shall then file with the director a reply to the suspension notice and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the director, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

History: **En. 14-664 by Sec. 64, Ch. 38, L. 1975; R.C.M. 1947, 14-664; amd. Sec. 2, Ch. 274, L. 1981.**

Cross-References

Injunctions, Title 27, ch. 19.

Dissolution, closing, and liquidation of banks, Title 32, ch. 1, part 5.

Insolvency or impairment of building and loan association — powers of department, 32-2-309.

Share insurance, 32-3-611.

32-3-206. Authorized activities of credit unions. Upon written application to the director, a credit union may engage in any activity in which such credit union could engage were it operating as a federal chartered credit union at the time such authority is granted. Such powers shall include, but not by way of limitation, the power to do any act and own, possess, and carry as assets property of such character including stocks, bonds, or other debentures which, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions, notwithstanding any restrictions elsewhere contained in the statutes of the state of Montana except that the director may not charter a credit union not having a common bond of membership as defined in 32-3-304. The director shall approve an activity if he finds that it fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the director disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied.

History: En. 14-676 by Sec. 76, Ch. 38, L. 1975; R.C.M. 1947, 14-676; amd. Sec. 1, Ch. 522, L. 1985.

Cross-References

Authorized activities of commercial bank, 32-1-105.

Authorized activities of savings bank, 32-1-106.

Authorized activities of trust company, 32-1-107.

Authorized activities of investment company, 32-1-108.

National bank powers extended to state banks, 32-1-362.

Powers and duties of building and loan associations, 32-2-401.

Conversion of charter, 32-3-323.

Part 3

Organization, Membership, and Dissolution

32-3-301. Organization procedure. (1) Any seven or more residents of this state, of legal age, who have a common bond defined in 32-3-304, may organize a credit union and become charter members thereof by complying with this section.

(2) The subscribers shall execute in duplicate articles of incorporation, which conform to the applicable Montana corporation law, and agree to the terms thereof, which articles shall state:

(a) the name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which shall be in $5 multiples of not less than $5 or more than $25;

(d) that the credit union shall be organized under this chapter for the purposes set forth therein;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which shall be not less than $5; and

(f) that the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers which are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the same in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the director of the department of commerce.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of commerce. The director may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union. The application shall be acted upon within 30 days. The articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received.

History: En. 14-603 by Sec. 3, Ch. 38, L. 1975; R.C.M. 1947, 14-603; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Formation of banks and trust companies, Title 32, ch. 1, part 3.

Organization of building and loan association, Title 32, ch. 2, part 2.

Election or appointment of officials, 32-3-403.

32-3-302. Form of articles and bylaws. In order to simplify the organization of credit unions, the director of the department of commerce shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available without charge to persons desiring to organize a credit union.

History: En. 14-604 by Sec. 4, Ch. 38, L. 1975; R.C.M. 1947, 14-604; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Banks and trust companies — bylaws, 32-1-308.

Building and loan associations — bylaws, 32-2-204.

32-3-303. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the director of the department of commerce who shall approve or disapprove the amendments within 60 days.

(2) Amendments shall become effective upon:

(a) approval in writing by the director, for which no fee may be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state.

History: En. 14-605 by Sec. 5, Ch. 38, L. 1975; amd. Sec. 32, Ch. 71, L. 1977; R.C.M. 1947, 14-605; amd. Sec. 2, Ch. 274, L. 1981.

32-3-304. Membership defined. (1) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid the required entrance fee or membership fee, or both, have subscribed for one or more shares and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(2) Credit union membership may include groups having a common bond of similar occupation, association, or interests or groups within a well-defined neighborhood, community, or rural district or employees of a common employer and members of the immediate family of such persons.

History: En. 14-615 by Sec. 15, Ch. 38, L. 1975; R.C.M. 1947, 14-615; amd. Sec. 1, Ch. 107, L. 1981.

Cross-References

Authorized activities of credit unions, 32-3-206.

32-3-305. Societies — associations. (1) Societies and partnerships composed primarily of individuals who are eligible for membership and corporations whose stockholders are composed primarily of such individuals may be admitted to membership in the same manner and under the same conditions as individuals.

(2) No loan may be made to any member society, partnership, or corporation in an aggregate amount that is in excess of 5% of the credit union's shares and retained earnings. Total loans to member societies, partnerships, and corporations is limited to an aggregate amount of 15% of the credit union's shares and retained earnings.

History: En. 14-616 by Sec. 16, Ch. 38, L. 1975; R.C.M. 1947, 14-616; amd. Sec. 2, Ch. 522, L. 1985.

Cross-References

Limitations on loans — banks and trust companies, 32-1-432.

Loans to managing officer or director — banks, 32-1-467.

Limitations on loans — building and loan associations, 32-2-415.

32-3-306. Other credit unions. Any credit union organized under this chapter may permit membership of any other credit union organized under this chapter or other laws.

History: En. 14-617 by Sec. 17, Ch. 38, L. 1975; R.C.M. 1947, 14-617.

Cross-References

Central credit unions, Title 32, ch. 3, part 8.

32-3-307. Limited-income persons. Existing credit unions may include within their field of membership limited-income persons, as defined by the director of the department of commerce, for whom credit union services are otherwise unavailable.

History: En. 14-618 by Sec. 18, Ch. 38, L. 1975; R.C.M. 1947, 14-618; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Director of the Department of Commerce, 32-3-201.

32-3-308. Members who leave field. Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors.

History: En. 14-619 by Sec. 19, Ch. 38, L. 1975; R.C.M. 1947, 14-619.

Cross-References

Duties of directors, 32-3-412.

32-3-309. Liability of members. The members of the credit union shall not be personally or individually liable for the payment of its debts.

History: En. 14-620 by Sec. 20, Ch. 38, L. 1975; R.C.M. 1947, 14-620.

Cross-References

Banks and trust companies — stockholders' liability, 32-1-333.

Building and loan associations — shares of stock subject to attachment, 32-2-264.

32-3-310. Meetings of members. (1) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(2) At all such meetings a member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(3) A society, association, partnership, or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than 18 years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

History: En. 14-621 by Sec. 21, Ch. 38, L. 1975; R.C.M. 1947, 14-621.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

Building and loan associations — meetings of stockholders and directors, 32-2-208.

Minors and adults defined, 41-1-101.

32-3-311 through 32-3-320 reserved.

32-3-321. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of commerce thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least 10 days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this chapter. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, he shall execute a certificate of dissolution on a form prescribed by the department and file the same with the department, together with all pertinent books and records of the liquidating credit union, whereupon such credit union shall be dissolved.

History: En. 14-665 by Sec. 65, Ch. 38, L. 1975; amd. Sec. 33, Ch. 71, L. 1977; R.C.M. 1947, 14-665; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Banks and trust companies — dissolution and disincorporation, 32-1-501.

Building and loan associations — voluntary liquidation and settlement, 32-2-431.

Business corporations — dissolution and liquidation, Title 35, ch. 1, part 9.

32-3-322. Merger. (1) Any credit union may, with the approval of the director of the department of commerce and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:

(a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the director, certified by him, and returned to both credit unions within 30 days.

(4) Upon return of the certificate from the director, all property rights and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.

(5) This section shall be construed whenever possible to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law.

History: En. 14-666 by Sec. 66, Ch. 38, L. 1975; R.C.M. 1947, 14-666; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Consolidation or merger of banks, 32-1-371.

Building and loan associations — consolidation and transfer, 32-2-271.

32-3-323. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the director of the department of commerce.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the director of the department of commerce and file proof of such compliance with said director.

History: En. 14-667 by Sec. 67, Ch. 38, L. 1975; R.C.M. 1947, 14-667; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Change from state to national bank, 32-1-361.

Conversion into federal savings and loan associations, 32-2-441.

Authorized activities of credit unions, 32-3-206.

Part 4

Operation and Officers

Part Cross-References

Authorized activities of credit unions, 32-3-206.

32-3-401. General powers. A credit union may:

(1) make contracts as provided for in this chapter;

(2) sue and be sued;

(3) adopt and use a common seal and alter same;

(4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;

(5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;

(6) receive savings from its members in the form of shares or special-purpose thrift accounts;

(7) lend its funds to its members as hereinafter provided;

(8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;

(9) discount and sell any eligible obligations, subject to rules prescribed by the director;

(10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the director;

(11) invest surplus funds as provided in this chapter;

(12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;

(13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

(16) collect, receive, and disburse moneys in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for such services;

(17) perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to such regulations as are prescribed by the director;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations as are prescribed by the director;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of such accounts are invested in shares of the credit union; or

(22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision thereof.

History: En. 14-613 by Sec. 13, Ch. 38, L. 1975; R.C.M. 1947, 14-613; amd. Sec. 3, Ch. 522, L. 1985.

Cross-References

State Treasurer as treasurer of state agencies — deposits of money, 17-6-105.

Loans of money — interest rates, Title 31, ch. 1, part 1.

Authorized activities of credit unions, 32-3-206.

Powers and duties of building and loan associations, 32-2-401.

Insurance for members, 32-3-609.

32-3-402. Incidental powers. A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state, including those that are necessary to enable it to promote and carry on most effectively its purposes.

History: En. 14-614 by Sec. 14, Ch. 38, L. 1975; R.C.M. 1947, 14-614.

32-3-403. Election or appointment of officials. (1) The credit union shall be directed by a board consisting of an odd number of directors, at least five in number, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for such terms as the bylaws provide. However, the bylaws of the credit union may provide that the

supervisory committee members are elected for such terms as the bylaws provide by the members of the credit union at the annual meeting of the members or provide that the credit union may not have a supervisory committee. If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417, are the responsibility of the board of directors.

(3) The board of directors shall appoint a credit committee consisting of an odd number, not less than three, for such terms as the bylaws provide or, in lieu of a credit committee, a credit manager.

History: En. 14-622 by Sec. 22, Ch. 38, L. 1975; R.C.M. 1947, 14-622; amd. Sec. 4, Ch. 522, L. 1985.

Cross-References

Banks and trust companies — selection of officers and employees, 32-1-325.

Building and loan associations — directors and officers, 32-2-206.

Organization procedures, 32-3-301.

Meetings of members, 32-3-310.

32-3-404. Record of board and committee members. Within 15 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union shall be filed with the department of commerce on forms provided by the department.

History: En. 14-623 by Sec. 23, Ch. 38, L. 1975; R.C.M. 1947, 14-623; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Records, 32-3-204.

32-3-405. Vacancies. The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees.

History: En. 14-624 by Sec. 24, Ch. 38, L. 1975; R.C.M. 1947, 14-624.

Cross-References

Banks and trust companies — board of directors — qualifications, tenure, and vacancies, 32-1-322.

32-3-406. Compensation of officials. No officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may be compensated for his service as such, but reasonable life, health, accident, and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business.

History: En. 14-625 by Sec. 25, Ch. 38, L. 1975; R.C.M. 1947, 14-625.

Cross-References

Liability insurance for officers, 32-3-610.

Life insurance, Title 33, ch. 20.

Disability insurance, Title 33, ch. 22.

32-3-407. Conflicts of interest. No director, committee member, officer, agent, or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested.

History: En. 14-626 by Sec. 26, Ch. 38, L. 1975; R.C.M. 1947, 14-626.

Cross-References

Standards of conduct for public employees, Title 2, ch. 2.

Purchase of obligation of bank by officer, 32-1-466.

Loans by bank to managing officer or director, 32-1-467.

Purchase of obligations of building and loan association by officer, 32-2-108.

Purchase of assets of building and loan association by officer, 32-2-109.

32-3-408. Executive officers. (1) At their organization meeting and within 15 days following each annual meeting of the members, the directors shall elect from their own number:

(a) an executive officer, who may be designated as chairman of the board or president;

(b) a vice-chairman of the board or one or more vice-presidents;

(c) a treasurer; and

(d) a secretary.

(2) The treasurer and the secretary may be the same individual.

(3) The persons so elected shall be the executive officers of the corporation.

(4) The terms of the officers shall be 1 year or until their successors are chosen and have duly qualified.

(5) The duties of the officers shall be prescribed in the bylaws.

(6) The board of directors may employ an officer in charge of operations, whose title shall be either president or general manager or president and general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

History: En. 14-627 by Sec. 27, Ch. 38, L. 1975; R.C.M. 1947, 14-627.

Cross-References

Banks and trust companies — selection of officers and employees, 32-1-325.

Building and loan associations — directors and officers, 32-2-206.

32-3-409. Authority of directors. The board of directors shall have the general direction of the business affairs, funds, and records of the credit union.

History: En. 14-628 by Sec. 28, Ch. 38, L. 1975; R.C.M. 1947, 14-628.

Cross-References

Records, 32-3-204.

Authorized activities of credit unions, 32-3-206.

32-3-410. Executive committee. From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board.

History: En. 14-629 by Sec. 29, Ch. 38, L. 1975; R.C.M. 1947, 14-629.

32-3-411. Meetings of directors. The board of directors and the executive committee shall meet as often as necessary, but one body must meet at least monthly and the other at least quarterly.

History: En. 14-630 by Sec. 30, Ch. 38, L. 1975; R.C.M. 1947, 14-630.

Cross-References

Banks and trust companies — selection of officers and employees — meetings and minutes, 32-1-325.

Building and loan associations — meetings of stockholders and directors, 32-2-208.

32-3-412. Duties of directors. The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, or other agent. However, the directors have the option of providing coverage under this subsection for only the treasurer elected by the board.

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;

(4) fix from time to time the maximum amount which may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares which may be owned by a member, such limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

History: En. 14-631 by Sec. 31, Ch. 38, L. 1975; amd. Sec. 45, Ch. 359, L. 1977; R.C.M. 1947, 14-631; amd. Sec. 5, Ch. 522, L. 1985.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Banks — bonding of employees, 32-1-461.

Membership defined, 32-3-304.

Members who leave field, 32-3-308.

Dividends, 32-3-502.

Loans and insurance, Title 32, ch. 3, part 6.

Investment of funds, 32-3-701.

32-3-413. Authority of credit committee. The credit committee shall have the general supervision of all loans to members.

History: En. 14-632 by Sec. 32, Ch. 38, L. 1975; R.C.M. 1947, 14-632.

Cross-References

Loans — purposes, terms, and interest rate, 32-3-601.

Loan application, 32-3-602.

Loan limit, 32-3-603.

32-3-414. Meeting of credit committee. The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered.

History: En. 14-633 by Sec. 33, Ch. 38, L. 1975; R.C.M. 1947, 14-633.

Cross-References

Loan application, 32-3-602.

32-3-415. Loan officers. (1) The credit committee may appoint one or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(2) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee.

History: En. 14-634 by Sec. 34, Ch. 38, L. 1975; R.C.M. 1947, 14-634.

Cross-References

Loan application, 32-3-602.

32-3-416. Credit manager. The credit committee may be dispensed with and a credit manager empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in 32-3-413 through 32-3-415 do not apply, and no loans shall be made unless approved by the credit manager, except the credit manager may appoint one or more loan officers with the power to approve loans, subject to such limitations or conditions as he prescribes.

History: En. 14-635 by Sec. 35, Ch. 38, L. 1975; R.C.M. 1947, 14-635.

Cross-References

Loan application, 32-3-602.

Loan limit, 32-3-603.

32-3-417. Duties of supervisory committee or board. (1) The board of directors or supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. It shall make or cause to be made such supplementary audits or examinations as it deems necessary or as are required by the director or by the board of directors and submit reports of these supplementary audits to the board of directors.

(2) The board of directors or supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years.

History: En. 14-636 by Sec. 36, Ch. 38, L. 1975; R.C.M. 1947, 14-636; amd. Sec. 6, Ch. 522, L. 1985.

Cross-References

Reports, 32-3-202.

Examinations, 32-3-203.

Records, 32-3-204.

32-3-418. Suspension and removal of officials. (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than 7 or more than 21 days after such suspension. At such meeting the suspension shall be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this chapter, the articles of incorporation, or the bylaws.

History: En. 14-637 by Sec. 37, Ch. 38, L. 1975; R.C.M. 1947, 14-637.

Cross-References

Banks and trust companies — removal of directors, officers, or employees, 32-1-468.

Removal of directors or officers of financial institutions, Title 32, ch. 1, part 9.

Building and loan associations — removal of directors, 32-2-207.

32-3-419. Calling of special meeting. The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of this chapter, the credit union's charter or bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized.

History: En. 14-638 by Sec. 38, Ch. 38, L. 1975; R.C.M. 1947, 14-638.

Cross-References

Meetings of members, 32-3-310.

Part 5

Shares and Accounts

32-3-501. Shares. (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for, and transferred in such manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

History: En. 14-639 by Sec. 39, Ch. 38, L. 1975; R.C.M. 1947, 14-639.

Cross-References

Uncertificated securities defined, 30-8-102.

Organization procedure, 32-3-301.

Form of articles and bylaws, 32-3-302.

General powers of credit unions, 32-3-401.

32-3-502. Dividends. (1) At such intervals and for such periods as the board of directors may authorize and after provision for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at such rates and upon such classes of shares as are determined by the board. Such dividends shall be paid on all paid-up shares outstanding at the close of the period for which the dividend is declared.

(2) Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportionate share of such dividend.

(3) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first 15 days of that month.

History: En. 14-640 by Sec. 40, Ch. 38, L. 1975; R.C.M. 1947, 14-640.

Cross-References

Building and loan associations — payment of expenses — losses — dividends — reserve fund, 32-2-411.

Duties of directors, 32-3-412.

32-3-503. Thrift accounts. Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors.

History: En. 14-641 by Sec. 41, Ch. 38, L. 1975; R.C.M. 1947, 14-641.

Cross-References

Duties of directors, 32-3-412.

32-3-504. Minors' accounts. Shares may be issued to a minor who may withdraw the shares including the dividends and interest thereon. Share payments made by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

History: En. 14-642 by Sec. 42, Ch. 38, L. 1975; R.C.M. 1947, 14-642.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Banks and trust companies — deposit in name of minor, 32-1-444.

Building and loan associations — shares held by minor, 32-2-418.

Power of minors to contract, Title 41, ch. 1, part 3.

32-3-505. Joint accounts. (1) A member may designate any person or persons to hold shares and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

History: En. 14-643 by Sec. 43. Ch. 38, L. 1975; R.C.M. 1947, 14-643.

Cross-References

Banks and trust companies — joint deposits — survivorship, 32-1-442.

Building and loan associations — joint ownership, 32-2-416.

Joint tenancy — how created, 70-20-105.

32-3-506. Trust accounts. (1) Shares may be issued in the name of a member in trust for a beneficiary, including a minor; but no beneficiary, unless a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such shares to such member shall, to the extent of such payment, discharge the liability of the credit union to the member and the beneficiary; and the credit union shall be under no obligation to see the application of such payment.

(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary.

History: En. 14-644 by Sec. 44, Ch. 38, L. 1975; R.C.M. 1947, 14-644.

Cross-References

Banks and trust companies — trust deposits — payment, 32-1-443.

Building and loan associations — trust — payment, 32-2-417.

Trust code, Title 72, ch. 33 through 36.

32-3-507. Liens. The credit union shall have a lien on the shares and accumulated dividends or interest of a member in his individual, joint, or trust account for any sum past due the credit union from said member or for any loan endorsed by him.

History: En. 14-645 by Sec. 45, Ch. 38, L. 1975; R.C.M. 1947, 14-645.

Cross-References

Liens, Title 71, ch. 3.

32-3-508. Dormant accounts. (1) If a credit union is unable to contact a member, beneficiary, or other person via first-class mail at the last address shown on the records of the credit union and if such inability continues for a period of more than 5 years, all shares, accounts, dividends, interest, and other sums due or standing in the name of such member, beneficiary, or other person may, by action of the board of directors, be segregated and thereafter no dividends or interest will accrue thereto.

(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance with the Uniform Disposition of Unclaimed Property Act.

(3) This section does not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1).

History: **En. 14-646 by Sec. 46, Ch. 38, L. 1975; R.C.M. 1947, 14-646.**

Cross-References

Uniform Disposition of Unclaimed Property Act, Title 70, ch. 9, parts 1 through 3.

32-3-509. Reduction in shares. (1) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire membership order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(2) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction.

History: **En. 14-647 by Sec. 47, Ch. 38, L. 1975; R.C.M. 1947, 14-647.**

Cross-References

Building and loan associations — funds for contingent losses, 32-2-410.

Meetings of members, 32-3-310.

32-3-510. Withdrawals. Shares may be withdrawn for payment to the account holder or to third parties in such manner and in accordance with such procedures as may be established by the board of directors.

History: **En. Sec. 8, Ch. 522, L. 1985.**

Cross-References

Authorized activities of credit unions, 32-3-206.

Part 6

Loans and Insurance

32-3-601. Loans — purposes, terms. A credit union may loan to members for such purpose and upon such security and terms as the credit committee, credit manager, or loan officer approves.

History: **En. 14-648 by Sec. 48, Ch. 38, L. 1975; R.C.M. 1947, 14-648; amd. Sec. 6, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983.**

Cross-References

Loans of money — what constitutes, 31-1-101.

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

32-3-602. Loan application. Every application for a loan shall be made in writing upon a form which the credit committee, credit manager, or loan officer prescribes. The application shall state the purpose for which the loan is desired and the security, if any, offered. Each loan shall be evidenced by a written document.

History: En. 14-649 by Sec. 49, Ch. 38, L. 1975; R.C.M. 1947, 14-649.

Cross-References

Authority of credit committee, 32-3-413.

32-3-603. Loan limit. No loan shall be made to any member in an aggregate amount in excess of 10% of the credit union's total assets.

History: En. 14-650 by Sec. 50, Ch. 38, L. 1975; R.C.M. 1947, 14-650.

Cross-References

Banks and trust companies — limitations on loans, 32-1-432.

Building and loan associations — limitation on loans, 32-2-415.

Duties of directors, 32-3-412.

32-3-604. Security. In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor, or assignment of shares of wages, in a manner consistent with the laws of this state, shall be deemed security within the meaning of this chapter. The adequacy of any security shall be determined by the credit committee, credit manager, or loan officer, subject to this chapter and the bylaws.

History: En. 14-651 by Sec. 51, Ch. 38, L. 1975; R.C.M. 1947, 14-651.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Banks — giving security for deposit prohibited — exceptions, 32-1-447.

Authority of credit committee, 32-3-413.

Loan officers, 32-3-415.

Credit manager, 32-3-416.

32-3-605. Installments. A member may receive a loan in installments or in one sum and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

History: En. 14-652 by Sec. 52, Ch. 38, L. 1975; R.C.M. 1947, 14-652.

Cross-References

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

32-3-606. Line of credit. Upon their own motion or upon application by a member, the credit committee or credit manager may approve a line of credit in advance, and advances may be granted to each member within the limit of such extension of credit. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such extension of credit.

History: En. 14-653 by Sec. 53, Ch. 38, L. 1975; R.C.M. 1947, 14-653.

Cross-References

U.C.C. — letters of credit, Title 30, ch. 5.

Loan limit, 32-3-603.

32-3-607. Other loan programs. (1) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(2) A credit union may participate in guaranteed loan programs of the federal and state government.

(3) A credit union may purchase the conditional sales contracts, notes, and similar instruments of its members.

History: **En. 14-654 by Sec. 54, Ch. 38, L. 1975; R.C.M. 1947, 14-654.**

Cross-References

Guaranteed student loan program, Title 20, ch. 26, part 11.

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

Building and loan associations allowed to make loans guaranteed under Servicemen's Readjustment Act of 1944, 32-2-420.

National Housing Act loans, Title 32, ch. 2, part 5.

32-3-608. Loans to officials. (1) A credit union may make loans to its directors, employees, loan officers, credit manager, and to members of its supervisory and credit committees, provided that:

(a) the loan complies with all lawful requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(b) any such loan or aggregate of loans to any one director or committee member which exceeds $2,500 plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, credit manager, and members of its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members, except when any such loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds $2,500, approval of the board of directors is required.

History: **En. 14-655 by Sec. 55, Ch. 38, L. 1975; R.C.M. 1947, 14-655.**

Cross-References

Guaranty, Title 28, ch. 11, parts 1 and 2.

Banks and trust companies — loans to managing officer or director, 32-1-467.

Building and loan associations — limitation on loans, 32-2-415.

32-3-609. Insurance for members. A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances or to any combination of them.

History: **En. 14-656 by Sec. 56, Ch. 38, L. 1975; R.C.M. 1947, 14-656.**

Cross-References

General powers of credit union, 32-3-401.

Authorization of insurers — certificate of authority required, 33-2-101.

32-3-610. Liability insurance for officers. A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

History: **En. 14-657 by Sec. 57, Ch. 38, L. 1975; R.C.M. 1947, 14-657.**

Cross-References
Indemnity, Title 28, ch. 11, part 3.
Suretyship insurance, Title 33, ch. 26.

32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and the director of the department.

(2) No credit union may begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the director of the department of commerce.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) The director of the department of commerce shall make available reports of condition and examination reports to the administrator of the national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of such administrators or officials. The director may appoint the administrator of the national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union.

History: En. 14-658 by Sec. 58, Ch. 38, L. 1975; R.C.M. 1947, 14-658; amd. Sec. 7, Ch. 36, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 7, Ch. 522, L. 1985.

Cross-References
Federal Deposit Insurance Corporation — definition of banking institution, 32-1-601.

Part 7

Investments and Reserves

32-3-701. Investment of funds. Funds not used in loans to members may be invested in:

(1) securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America, or any agency thereof, or in any trust or trusts established for investing directly or collectively in the same;

(2) general obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by congress, or any political subdivisions thereof;

(3) certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, building and loan association, or savings and loan association;

(4) loans to or in shares or deposits of other credit unions;

(5) the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the

case may be, of such agency or association are primarily confined or restricted to credit unions or organizations of credit unions and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations;

(6) shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding 10% of the shares and surplus of the credit union;

(7) loans to any credit union association or corporation, national or state, of which the credit union is a member, except that such investments shall be limited to 2% of the assets of the credit union.

History: En. 14-659 by Sec. 59, Ch. 38, L. 1975; R.C.M. 1947, 14-659.

Cross-References

Coal severance tax bonds — legal investments, 17-5-718.

Highway revenue bonds — legal investments, 17-5-930.

Economic development bonds as legal investments, 17-5-1525.

Municipal finance consolidation bonds as legal investments, 17-5-1628.

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Banks and trust companies — demand or time deposits, 32-1-445.

Building and loan associations — payment of expenses — losses — dividends — reserve fund, 32-2-411.

Authorized activities of credit unions, 32-3-206.

General powers of credit unions, 32-3-401.

Central credit unions, Title 32, ch. 3, part 8.

Cooperative associations — shares, dividends, and distributions, Title 35, ch. 15, part 4.

Trust code, Title 72, ch. 33 through 36.

Montana Health Facility Authority bonds — legal investment, 90-7-113.

32-3-702. Makeup of regular reserve. (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:

(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then

(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then

(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.

(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.

(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve.

History: En. 14-660 by Sec. 60, Ch. 38, L. 1975; R.C.M. 1947, 14-660.

Cross-References

Banks allowed to join federal reserve bank, 32-1-373.

Building and loan associations — fund for contingent losses, 32-2-410.

32-3-703. Use of regular reserve. The regular reserve shall belong to the credit union and shall be used to meet losses including, with prior approval of the director of the department of commerce, losses from the sale of investments or securities. The regular reserve may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director of the department of commerce.

History: En. 14-661 by Sec. 61, Ch. 38, L. 1975; R.C.M. 1947, 14-661; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 219, L. 1983.

Cross-References

Director of the Department of Commerce, 32-3-201.

Liquidation, 32-3-321.

Reduction in shares, 32-3-509.

32-3-704. Risk assets defined. For the purpose of establishing the reserves required, all assets except the following are considered risk assets:

(1) cash on hand;

(2) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(3) assets that are insured, fully guaranteed as to principal and interest, or due from the United States government, its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the provision of Title IV, part B, of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act by the federal housing administration;

(7) shares in central credit unions organized under this chapter or of any other state law or of the Federal Credit Union Act;

(8) common trust investments that deal in investments authorized by this chapter;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) furniture and equipment; and

(13) land and buildings.

History: En. 14-662 by Sec. 62, Ch. 38, L. 1975; R.C.M. 1947, 14-662; amd. Sec. 1, Ch. 4, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (11) excepting fully secured loans from consideration as risk assets; and made minor changes in style.

Cross-References

Guaranteed student loan program, Title 20, ch. 26, part 11.

National Housing Act loans, Title 32, ch. 2, part 5.

32-3-705. Special reserves. In addition to such regular reserve, special reserves to protect the interest of members shall be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the director of the department of commerce, in any special case, to be necessary for that purpose.

History: En. 14-663 by Sec. 63, Ch. 38, L. 1975; R.C.M. 1947, 14-663; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Director of the Department of Commerce, 32-3-201.

Authority of directors, 32-3-409.

Duties of directors, 32-3-412.

Part 8

Central Credit Unions

32-3-801. Organization. Any central credit union may be organized and operated under this chapter and subject to all such provisions not inconsistent with this chapter. Such credit union shall use the term "central" in its official name.

History: En. 14-668 by Sec. 68, Ch. 38, L. 1975; R.C.M. 1947, 14-668.

32-3-802. Membership. Membership in such central credit union may include, but not be limited to:

(1) credit unions organized and operating under this chapter or under any other credit union law;

(2) officers, directors, committee members, and employees of such credit unions; officials and employees of any association of credit unions; and employees of federal or state government agencies responsible for the supervision of credit unions in this state;

(3) organizations and associations of those persons or organizations enumerated in subsections (1) and (2);

(4) employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union;

(5) persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; or

(6) members of the immediate families of all members qualified above.

History: En. 14-669 by Sec. 69, Ch. 38, L. 1975; R.C.M. 1947, 14-669.

Cross-References

Credit union membership defined, 32-3-304.

Other credit unions, 32-3-306.

Liquidation of credit unions, 32-3-321.

General powers of credit unions, 32-3-401.

32-3-803. Voting representative. Each credit union becoming a member of such central credit union may designate one person to be its voting representative in the central credit union, which person shall be designated by the board of directors of the member credit union. Such voting representative shall be eligible to hold office in the central credit union as if such person were himself a member of the central credit union.

History: En. 14-670 by Sec. 70, Ch. 38, L. 1975; R.C.M. 1947, 14-670.

Cross-References

Duties of directors of credit unions, 32-3-412.

32-3-804. Additional rights and powers. (1) A central credit union shall have all of the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this section, notwithstanding any limitations or restrictions found elsewhere in this chapter.

(2) A central credit union may make loans to other credit unions, purchase shares of other credit unions, and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation.

(3) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A central credit union may borrow and accept money from any source and issue notes or debentures.

(5) A central credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors:

(a) elect exemption of insurance on share accounts under the provisions of Title II of the Federal Credit Union Act;

(b) borrow from any source an amount not in excess of three times its total assets after deduction of the notes payable account; however, with prior written approval of the director of the department of commerce, the credit union may exceed such limitation; and

(c) make loans to any member in an aggregate amount not in excess of 20% of the central credit union's total assets.

History: **En. 14-671 by Sec. 71, Ch. 38, L. 1975; amd. Sec. 1, Ch. 111, L. 1977; R.C.M. 1947, 14-671; amd. Sec. 1, Ch. 233, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.**

Cross-References

General powers of credit unions, 32-3-401.

Investment of funds, 32-3-701.

Part 9

Taxation

Part Cross-References

Taxation of corporations, Title 15, ch. 31.

32-3-901. Taxation. All credit unions organized under this or any other credit union law shall have the same immunity from state and local taxation that federal credit unions have from time to time under the laws of the United States.

History: **En. 14-672 by Sec. 72, Ch. 38, L. 1975; R.C.M. 1947, 14-672.**

Cross-References

Conversion of charter by credit union, 32-3-323.

32-3-902. Stock transfer taxes. The shares of any credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

History: En. 14-673 by Sec. 73, Ch. 38, L. 1975; R.C.M. 1947, 14-673.

Cross-References

U.C.C. — investment securities — duty of issuer to register transfer, 30-8-401.

Securities regulation — tax obligations, 30-10-410.

Shares, 32-3-501.

32-3-903. Effect of participation in government programs. The participation by a credit union in any government program providing unemployment, social security, old-age pension, or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

History: En. 14-674 by Sec. 74, Ch. 38, L. 1975; R.C.M. 1947, 14-674.

CHAPTER 4

DEVELOPMENT CORPORATION ACT

Part 1 — General Provisions

32-4-101. Definitions.
32-4-102. Purpose.
32-4-103. Credit of state and local governments not pledged.
32-4-104. Application of corporation law.

Part 2 — Organization

32-4-201. Incorporators — general powers — capital stock — articles of incorporation.
32-4-202. Duration.
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32-4-206. Board of directors.
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Part 3 — Operation and Regulation

32-4-301. Powers of stockholders.
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32-4-303. Withdrawal of membership.
32-4-304. Surplus.
32-4-305. Deposit of funds.
32-4-306. Control — supervision — reports.

Chapter Cross-References

Credit Transactions and Relationships, Title 31.

Corporations, Partnerships, and Associations, Title 35.

Part 1

General Provisions

32-4-101. Definitions. As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "corporation"—a Montana development corporation created under this chapter;

(2) "financial institution"—any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

(3) "member"—any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this chapter, upon its call and in accordance with the provisions of this chapter;

(4) "board of directors"—the board of directors of a corporation created under this chapter;

(5) "loan limit"—for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter.

History: En. Sec. 2, Ch. 128, L. 1969; R.C.M. 1947, 15-2602; amd. Sec. 1, Ch. 320, L. 1983.

Cross-References

Definition of regulated lender, 31-1-111.

32-4-102. Purpose. (1) The purposes of the corporation shall be to:

(a) promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens;

(b) encourage and assist through loans, investments, or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry;

(c) stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state;

(d) cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and

(e) provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(2) In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 35 the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

History: En. Sec. 1, Ch. 128, L. 1969; R.C.M. 1947, 15-2601.

Cross-References

Economic development bonds, Title 17, ch. 5, part 15.

Development coordination — planning and economic development, Title 90, ch. 1, part 1.

Secondary industry and commercial development, Title 90, ch. 5.

32-4-103. Credit of state and local governments not pledged. Under no circumstances is the credit of the state, county, or municipal governments or their agencies or authorities pledged under this chapter.

History: En. Sec. 17, Ch. 128, L. 1969; R.C.M. 1947, 15-2617; amd. Sec. 1, Ch. 497, L. 1989.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Obligations of Housing Board — credit of state not pledged, 90-6-123.

32-4-104. Application of corporation law. The provisions of Title 35 shall apply to the corporation insofar as they may be applicable and not inconsistent with this chapter.

History: En. Sec. 18, Ch. 128, L. 1969; R.C.M. 1947, 15-2618.

Part 2

Organization

32-4-201. Incorporators — general powers — capital stock — articles of incorporation. Nine or more persons, a majority of whom shall be residents of this state, who desire to create a development corporation under the provisions of this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided may be incorporated in the following manner:

(1) The persons shall by articles of incorporation filed in the manner prescribed in Title 35, under their hands and seals, set forth:

(a) the name of the corporation, which shall include the words "Development Corporation of Montana";

(b) the location of the principal office of the corporation, but the corporation may have offices in other places within the state as may be fixed by the board of directors;

(c) the purposes for which the corporation is founded, which shall include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from members, nonmember persons, firms, or corporations and state, federal, county, or municipal agencies or authorities for any of the purposes of the corporation; to issue for the purposes of the corporation its bonds, debentures, convertible debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the indebtedness by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part or interest in its property, franchises, rights, and privilege, without securing stockholder or member approval; provided that a loan to the corporation may not be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of the loans and in the same manner;

(iv) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any loans and the charges for interest and service connected with the loans; provided, however, that the corporation may not approve any application for a loan unless the person applying for the loan shows that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(v) to participate with any duly authorized private lending agency or city, county, state, or federal governmental lending agencies in the making of loans;

(vi) to purchase, receive, hold, lease, or otherwise acquire, except by condemnation, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with rights and privileges as may be incidental and appurtenant to the property and the use of the property, including but not restricted to any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(vii) to acquire the good will, business, rights, real and personal property, and other assets or any part or interest in the assets of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any person, firm, corporation, joint-stock company, association, or trust;

(viii) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments or for the purpose of disposing of real estate to others for the construction of industrial plants or other business establishments;

(ix) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(x) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder of interest for indebtedness exercise all the rights, powers, and privileges of ownership, including the right to vote;

(xi) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections (1)(c)(vi) through (1)(c)(x) of this section, as security for the payment of any part of the purchase price of the property, right, or thing of value;

(xii) to cooperate with and avail itself of the facilities of the state planning and economic development divisions of the department of commerce and any similar governmental agencies and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of the communities or of this state or of any part of the state;

(xiii) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency or authority, whether state, federal, county, or municipal;

(xiv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 35, so far as consistent with this chapter.

History: En. Sec. 3, Ch. 128, L. 1969; amd. Sec. 34, Ch. 71, L. 1977; R.C.M. 1947, 15-2603; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 2, Ch. 320, L. 1983; amd. Sec. 2, Ch. 497, L. 1989.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Registration of assumed business name similar to reserved or registered name or mark prohibited, 30-13-202.

Corporations — merger, consolidation, share exchange and sale of assets, Title 35, ch. 1, part 8.

Development coordination — planning and economic development, Title 90, ch. 1, part 1.

32-4-202. Duration. The period of duration of the corporation shall be perpetual.

History: En. Sec. 15, Ch. 128, L. 1969; R.C.M. 1947, 15-2615.

32-4-203. Certificate of incorporation. Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this chapter. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this chapter, as set forth in 32-4-201.

History: En. Sec. 4, Ch. 128, L. 1969; R.C.M. 1947, 15-2604.

32-4-204. Effect of failure to commence business. If a corporation organized pursuant to this chapter shall fail to begin business within 5 years from the effective date of its articles of incorporation, then said articles shall become null and void.

History: En. Sec. 16, Ch. 128, L. 1969; R.C.M. 1947, 15-2616.

32-4-205. Amendment of articles of incorporation. (1) The articles of incorporation may be amended by vote of the stockholders of the corporation and such amendments shall require approval by the affirmative vote of two-thirds of the stockholders, provided:

(a) that no amendment which is inconsistent with the general purposes expressed herein or which eliminates or curtails the obligation of the corporation to make reports as provided in 32-4-306 shall be made without amendment of this chapter; and

(b) that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation; makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation; or affects a member's right to withdraw from membership as provided in 32-4-303 shall be made without the consent of each member affected by such amendment.

(2) Within 30 days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this chapter be submitted, as prescribed in Title 35, to the secretary of state who shall examine them. If he finds that they conform to the requirements of this chapter, he shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state, and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969; R.C.M. 1947, 15-2605; amd. Sec. 1, Ch. 91, L. 1987.

32-4-206. Board of directors. (1) The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and other officers and agents as the corporation by its bylaws shall authorize.

(2) The board of directors shall consist of a number, not less than nine, as determined in the first instance by the incorporators and thereafter annually by the stockholders of the corporation, provided that any state, county, or municipal agency or authority that has made a grant or loan to the corporation shall have at least one seat on the board of directors and additional seats representative of its proportional investment in the corporation.

(3) The directors need not be stockholders in the corporation.

(4) The board of directors may exercise all the powers of the corporation except as are conferred by law or by the bylaws of the corporation upon the stockholders and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director.

(5) The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation or, if no annual meeting is held in any year at the time fixed by the bylaws, at a

special meeting held in lieu of the annual meeting. At each annual meeting or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws.

(6) Directors and officers are not responsible for losses unless the losses were occasioned by the willful misconduct of the directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969; R.C.M. 1947, 15-2606; amd. Sec. 2, Ch. 91, L. 1987; amd. Sec. 3, Ch. 497, L. 1989.

32-4-207. First meeting of corporation. (1) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least 5 days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(2) At such first meeting the incorporators shall organize by the choice by ballot of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Five of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969; R.C.M. 1947, 15-2608.

32-4-208. Stock ownership and limitations. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) all persons, domestic corporations organized for the purpose of carrying on business within this state, including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and trusts are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) all financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) a financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other

evidences of indebtedness created by, or the shares of the capital stock of, the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state.

History: **En. Sec. 9, Ch. 128, L. 1969; R.C.M. 1947, 15-2609; amd. Sec. 3, Ch. 91, L. 1987.**

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities regulation, Title 30, ch. 10.

Investments of financial institutions, 32-1-424.

Investments of building and loan associations, 32-2-406.

Investment of funds of credit unions, 32-3-701.

Shareholders, Title 35, ch. 1, part 5.

Shares, Title 35, ch. 1, part 6.

Part 3

Operation and Regulation

32-4-301. Powers of stockholders. (1) The stockholders of the corporation shall have the following powers of the corporation:

(a) to determine the number of and elect directors as provided in 32-4-206;

(b) to make, amend, and repeal bylaws;

(c) to amend the articles of incorporation as provided in 32-4-205;

(d) to exercise such other of the powers of the corporation as may be conferred on the stockholders by the bylaws.

(2) As to all matters requiring action by the stockholders of the corporation, and except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him.

History: **En. Sec. 7, Ch. 128, L. 1969; R.C.M. 1947, 15-2607; amd. Sec. 4, Ch. 91, L. 1987.**

Cross-References

Shareholders, Title 35, ch. 1, part 5.

32-4-302. Membership — limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this chapter. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed 10 times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) 20% of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding amounts validly called for loan but not yet loaned;

(b) the following limit, to be determined on the basis of the member's balance sheet at the close of its 1982 fiscal year and then redetermined periodically with the concurrence of the member:

(i) 3% of the capital and surplus of commercial banks and trust companies;

(ii) 1/4 of 1% of the total outstanding loans made by a building and loan association;

(iii) 2% of the capital and unassigned surplus of stock insurance companies; and

(iv) such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) The board of directors, on the request of any financial institution applying for membership and with the approval of one-half of the members that are the same type of financial institution as the applicant, may authorize a different loan limit than that set forth in subsection (3)(b).

(5) Subject to subsection (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(6) All loans to the corporation by a member shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of not less than 1/4 of 1% in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the time.

History: En. Sec. 10, Ch. 128, L. 1969; R.C.M. 1947, 15-2610; amd. Sec. 3, Ch. 320, L. 1983; amd. Sec. 1, Ch. 90, L. 1985.

Cross-References

Interest rate limitation exemption — regulated lenders, 31-1-112.

Limitations on loans of banks, 32-1-432.

Limitation on loans of building and loan associations, 32-2-415.

Credit unions — membership defined, 32-3-304.

Credit unions — loans, 32-3-601 through 32-3-604.

Board of directors, 32-4-206.

32-4-303. Withdrawal of membership. (1) Membership in the corporation shall be for the duration of the corporation, provided that, upon written notice given to the corporation 2 years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

(2) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969; R.C.M. 1947, 15-2611.

Cross-References

Building and loan associations — stock withdrawal, 32-2-404.

Credit unions — members who leave field, 32-3-308.

Amendment of articles of incorporation, 32-4-205.

32-4-304. Surplus. Each year the corporation shall set apart as earned surplus not less than 10% of its net earnings for the preceding fiscal year until such surplus shall be equal in value to 50% of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969; R.C.M. 1947, 15-2612; amd. Sec. 4, Ch. 320, L. 1983.

32-4-305. Deposit of funds. (1) The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

(2) The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969; R.C.M. 1947, 15-2613.

Cross-References

Board of directors, 32-4-206.

32-4-306. Control — supervision — reports. The corporation is subject to the examination of the department of commerce and shall make reports of its condition not less than annually to that department, which in turn shall make copies of the reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 35.

History: En. Sec. 14, Ch. 128, L. 1969; amd. Sec. 87, Ch. 431, L. 1975; R.C.M. 1947, 15-2614; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

Commissioner of Insurance — State Auditor as ex officio, 2-15-1903.

Amendment of articles of incorporation, 32-4-205.

Business corporations — annual reports, Title 35, ch. 1, part 11.

CHAPTER 5

CONSUMER LOAN BUSINESSES

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Chapter Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Credit Transactions and Relationships, Title 31.

Insurance premium finance companies, Title 33, ch. 14.

Part 1

General Provisions

Part Cross-References

Wage brokers, Title 31, ch. 1, part 3.

32-5-101. Short title. This chapter may be cited as the "Montana Consumer Loan Act".

History: En. Sec. 1, Ch. 283, L. 1959; R.C.M. 1947, 47-201.

Cross-References

Retail installment sales, Title 31, ch. 1, part 2.

32-5-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

(2) "License" means one or both of the licenses provided for by this chapter.

(3) "Licensee" means the person holding a license.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Consumer type loan business" means the business of making loans generally repayable in substantially equal installments.

History: En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971; amd. Sec. 1, Ch. 172, L. 1975; amd. Sec. 110, Ch. 431, L. 1975; R.C.M. 1947, 47-202; amd. Sec. 1, Ch. 216, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 424, L. 1981; amd. Sec. 1, Ch. 140, L. 1983.

Cross-References

Loan of money — what constitutes, 31-1-101.

32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. A person engaged in business as a licensed pawnbroker may not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(4) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

History: En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971; amd. Sec. 2, Ch. 172, L. 1975; R.C.M. 1947, 47-204; amd. Sec. 2, Ch. 216, L. 1979; amd. Sec. 2, Ch. 424, L. 1981; amd. Sec. 1, Ch. 103, L. 1983; amd. Sec. 2, Ch. 140, L. 1983; amd. Sec. 1, Ch. 168, L. 1985; amd. Sec. 2, Ch. 406, L. 1985.

Cross-References

Assignment of wages to be considered a loan, 31-1-308.

Interest pawnbrokers may receive, 31-1-401.

Banks and trust companies — limitations on loans, 32-1-432.

Building and loan associations — limitation on loans, 32-2-415.

Credit unions — loan limit, 32-3-603.

Development credit corporation — membership — limitation and apportionment of loans by members, 32-4-302.

32-5-104. Adjustment of dollar amounts. (1) From time to time the dollar amounts in this chapter designated as subject to change shall change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967 = 100, compiled by the bureau of labor statistics, department of labor, and hereafter referred to as the index. The index for December 1980 shall be the reference base index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index is 10% or more, but:

(a) the portion of the percentage change in the index in excess of a multiple of 10% shall be disregarded and the dollar amounts shall change only in multiples of 10% of the amounts appearing in this chapter on October 1, 1981;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this chapter as a result of earlier application of this section; and

(c) the dollar amounts may not be reduced below the amounts appearing in this chapter on October 1, 1981.

(3) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable

by the rebasing factor furnished by the United States bureau of labor statistics. If the index is superseded, the index referred to in this section shall be the one represented by the bureau of labor statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The department shall adopt a rule announcing:

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the index required by subsection (3) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(5) A person does not violate this chapter with respect to a transaction otherwise complying with this chapter if he relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts.

History: En. Sec. 9, Ch. 424, L. 1981.

Part 2

Licensure Requirements

32-5-201. License application and fees — supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit $50 as an investigation fee and $125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is $62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

(3) All moneys collected under the authority of this chapter shall be paid by the department into the state special revenue fund for the use of the department in its supervision function.

(4) The amount of $1,000 in subsection (2) is subject to change pursuant to the provisions of 32-5-104.

History: Ap. p. Sec. 6, Ch. 283, L. 1959; amd. Sec. 112, Ch. 431, L. 1975; Sec. 47-206, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-206; amd. Sec. 3, Ch. 216, L. 1979; amd. Sec. 3, Ch. 424, L. 1981; amd. Sec. 3, Ch. 140, L. 1983; amd. Sec. 6, Ch. 600, L. 1985.

Cross-References

State finance — fund structure, 17-2-102.

Discrimination in licensing prohibited, 49-3-204.

32-5-202. Issuance or denial of license. (1) Within 30 days after an application for license is filed with the department together with the required fees, the department shall issue the license, if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this chapter, or enter an order denying the license, if it finds to the contrary.

(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application.

History: En. Sec. 7, Ch. 283, L. 1959; amd. Sec. 113, Ch. 431, L. 1975; R.C.M. 1947, 47-207.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

32-5-203. Conduct of other business in same office. A licensee may conduct the business of making loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in or in association or conjunction therewith unless the department shall find, after a hearing, that the other business is of such nature that such conduct tends to conceal evasion of this chapter or of the rules made hereunder and shall order such licensee in writing to desist from such conduct.

History: En. Sec. 8, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-208.

Cross-References

Wage brokers, Title 31, ch. 1, part 3.

Pawnbrokers, Title 31, ch. 1, part 4.

32-5-204. License renewal fee. Every licensee shall, on or before December 1, pay to the department the sum of $125 for each license held as a license fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

History: En. Sec. 9, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 35, Ch. 71, L. 1977; R.C.M. 1947, 47-209.

32-5-205. Surrender of license. Any licensee may surrender any license by delivering it to the department with written notice thereon, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

History: En. Sec. 21, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-221.

32-5-206. Termination of license not to affect preexisting contract. No revocation, surrender, or expiration of any license shall impair or affect the obligation of any preexisting lawful contract.

History: En. Sec. 22, Ch. 283, L. 1959; R.C.M. 1947, 47-222.

Cross-References

Contracts in general, Title 28, ch. 2 and 3.

32-5-207. Revocation and suspension of license. The department, upon 10 days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued.

History: En. Sec. 23, Ch. 283, L. 1959; amd. Sec. 116, Ch. 431, L. 1975; R.C.M. 1947, 47-223.

Cross-References

Department — powers and duties, 32-5-401.

32-5-208. Reinstatement. The department may reinstate any suspended or revoked license if no fact or condition then exists which clearly would have justified the department in refusing originally to issue such license. In any case where the license has been revoked for cause, no application shall be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

History: En. Sec. 24, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-224.

Cross-References

Department — powers and duties, 32-5-401.

Part 3

Operation of Business — Restrictions and Requirements

32-5-301. Charges, refunds, penalties, filing fees. (1) Every licensee or holder of a supplementary license hereunder may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in (1) shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge which would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

(5) (a) The licensee may include in the principal amount of any loan the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(6) No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee shall have no right to collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis.

History: Ap. p. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965; Sec. 47-210, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-210; amd. Sec. 6, Ch. 216, L. 1979; amd. Sec. 4, Ch. 424, L. 1981; amd. Sec. 2, Ch. 135, L. 1983; amd. Sec. 4, Ch. 140, L. 1983; amd. Sec. 2, Ch. 168, L. 1985; amd. Sec. 3, Ch. 406, L. 1985.

Cross-References

Legal interest, 31-1-106.

Interest rate allowed by agreement, 31-1-107.

Penalty for usury — action to recover excessive interest, 31-1-108.

Limitation of Rule of 78ths, 31-1-113.

Finance charge limitation, 31-1-241.

License application and fees, 32-5-201.

Penalties, 32-5-406.

32-5-302. Installment payment — contract period. (1) No licensee may enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making such contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than $1,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making.

(2) Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number of days in excess

of 30 from the date of making may be added to the scheduled amount of the installments.

(3) The amounts of $300, $1,000, and $2,500 in subsection (1) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts.

History: En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971; amd. Sec. 36, Ch. 71, L. 1977; R.C.M. 1947, 47-211; amd. Sec. 5, Ch. 424, L. 1981; amd. Sec. 1, Ch. 150, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(c) increased time of repayment agreement from 37 to 48 calendar months.

Cross-References

Contracts — time of performance, Title 28, ch. 3, part 6.

Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.

32-5-303. Borrower to receive copy of contract or statement of contents. At the time the loan is made, there will be delivered to the borrower, or if there be two or more borrowers to one of them, the disclosures required by the Federal Consumer Credit Protection Act, a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

(2) the date of the loan contract;

(3) the schedule of installments or description thereof;

(4) the principal amount of the loan excluding charges;

(5) the rate or amount of charges as the contract may provide;

(6) the amount collected or paid out for each kind of insurance, if any;

(7) the amount collected or paid out for filing and other fees as allowed in 32-5-301(5);

(8) the collateral or security for the loan including all other accommodation or other joint makers (comakers);

(9) that the borrower may prepay the loan in whole or in part at any time during a licensee's regular business hours and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(3) if such loan is prepaid in full.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 6, Ch. 424, L. 1981; amd. Sec. 4, Ch. 406, L. 1985.

Cross-References

Requirements of retail installment contracts, 31-1-231.

32-5-304. Receipts — return of note. Every licensee shall:

(1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made in cash on account of any loan at the time such payment is made;

(2) endorse indelibly on a loan ledger or card, which shall be kept by the licensee, the amount and date of each payment made by the borrower. Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any such system containing information equivalent to that required on a loan ledger or card.

(3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after such repayment. Such canceled notes and canceled assignments shall be mailed to the borrower at his last known address unless returned to the borrower in person.

History: En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 1, Ch. 84, L. 1981.

Cross-References

Notice and receipt of payment, 31-1-236.

32-5-305. Confessions of judgment — incomplete instruments forbidden. No licensee shall:

(1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding;

(2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed charges and in which blanks are left to be filled in after execution. However, such details need not appear on a certificate of title to a motor vehicle, a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located, or customary powers in connection with bonds or stocks which may be pledged as collateral; or

(3) take any instrument in which blanks are left to be filled in after the loan is made.

History: En. Sec. 13, Ch. 283, L. 1959; R.C.M. 1947, 47-213.

Cross-References

Confession of judgment, Title 27, ch. 9.

Requirements of retail installment contracts, 31-1-231.

32-5-306. Insurance. (1) Except as provided in this section, insurance may not be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan.

(2) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct business in Montana by a duly licensed agent or agency of this state. Premiums may not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) When the principal amount of the loan exceeds $300 exclusive of the portion of the loan attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion of the loan attributable to insurance premiums and charges.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that a licensee may not require a borrower to purchase insurance from the licensee or from any particular agent, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section may not be considered to be additional charges or a violation of this chapter.

(6) A licensee may not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

(7) The amount of $300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971; amd. Sec. 4, Ch. 172, L. 1975; R.C.M. 1947, 47-214; amd. Sec. 4, Ch. 216, L. 1979; amd. Sec. 7, Ch. 424, L. 1981; amd. Sec. 5, Ch. 140, L. 1983; amd. Sec. 1, Ch. 193, L. 1989.

Cross-References

Retail installment contracts — insurance, 31-1-233.

Insurance, Title 33.

Credit life and disability insurance, Title 33, ch. 21.

32-5-307. Records to be kept. Each licensee shall keep in each licensed office such books, accounts, and records as the department shall require and as are necessary to enable the department to determine whether the licensee is complying with this chapter and with the rules promulgated thereunder. The licensee shall preserve such records for at least 2 years after making the final entry on any loan recorded thereon.

History: En. Sec. 17, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-217.

Cross-References

Department — powers and duties — adoption of rules, 32-5-401.

Access to records — witnesses, 32-5-404.

32-5-308. Annual report. (1) A licensee shall annually before April 15 file a report for the preceding calendar year with the department.

(2) The report shall give information with respect to the financial condition of the licensee and shall include:

(a) the name and address of the licensee;

(b) balance sheets at the beginning and end of the calendar year;

(c) a statement of income and expenses;

(d) a reconciliation of surplus or net earnings with the balance sheets;

(e) a schedule of assets used in the consumer loan business;

(f) an analysis of charges, size of loans made, and types of security on loans;

(g) an analysis of suits and foreclosures; and

(h) other relevant information the department may reasonably require concerning the business during the preceding calendar year of each licensed place of business conducted by the licensee in this state.

(3) The report shall be made under oath and be in a form prescribed by the department, which shall publish annually an analysis and summary of the reports.

History: En. Sec. 18, Ch. 283, L. 1959; amd. Sec. 115, Ch. 431, L. 1975; R.C.M. 1947, 47-218.

Cross-References

Annual examinations — cost, 32-5-403.

32-5-309. Advertising — limitations. No person shall advertise, display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans.

History: En. Sec. 19, Ch. 283, L. 1959; R.C.M. 1947, 47-219.

Cross-References

Consumer Protection Act, Title 30, ch. 14, part 1.

When advertising as bank prohibited, 32-1-402.

Montana Electronic Funds Transfer Act — advertising restrictions, 32-6-307.

32-5-310. Wage assignments — limitations. (1) The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, be considered interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by and be subject to the provisions of this chapter.

(2) Any assignment or other transfer to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services must be limited to not exceeding 10% of such salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer and thereafter to become owing. However, no such assignment or order is valid unless it is in writing, signed in person by the borrower or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when such assignment or order is made. Only if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security shall notice be given to the debtor's employer of such assignment or transfer. Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent, and must include:

(a) a correct copy of the assignment;

(b) a statement of the amount of such loan and the amount due and unpaid thereon;

(c) a copy of this section.

(3) The acceptance and honoring of any assignment shall be at the option of the employer.

History: En. Sec. 20, Ch. 283, L. 1959; amd. Sec. 37, Ch. 71, L. 1977; R.C.M. 1947, 47-220.

Cross-References

Wage brokers, Title 31, ch. 1, part 3.

32-5-311 through 32-5-320 reserved.

32-5-321. Deferral charge permitted — nature of deferral charge. Notwithstanding the provisions of 32-5-301 and 32-5-302, if the contract so provides, a consumer loan licensee may, at any time, grant a deferral and make deferral charges as provided in 32-5-322. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the deferral period. The deferral period is that period during which no installment is scheduled to be paid by reason of the deferral.

History: En. Sec. 1, Ch. 341, L. 1979.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

32-5-322. Deferral charge — rate. The deferral charge for a 1-month period may not exceed an amount equal to the difference between the refund which would be required for prepayment in full under 32-5-301(3) as of the scheduled due date of the first deferred installment and the refund which would be required for prepayment in full as of 1 month prior to such date. A proportionate charge may be made for deferrals for periods of more or less than 1 month. A deferral charge is earned pro rata on a daily basis during the deferral period and is fully earned on the last day of the deferral period. Should a loan be prepaid during a deferral period the licensee shall make or credit to the borrower a pro rata refund of the unearned deferral charge in addition to any refund or credit made pursuant to 32-5-301(3).

History: En. Sec. 2, Ch. 341, L. 1979; amd. Sec. 3, Ch. 168, L. 1985; amd. Sec. 5, Ch. 406, L. 1985.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

32-5-323. Deferral prohibited when default charge has been collected. No installment payment upon which a default charge has been collected may be deferred unless the default charge is refunded to the borrower or credited to the deferral charge.

History: En. Sec. 3, Ch. 341, L. 1979.

32-5-324. Collection of deferral charge. A deferral charge may be collected at the time it accrues or any time thereafter.

History: En. Sec. 4, Ch. 341, L. 1979.

Cross-References

Retail installment sales — delinquency fee, 31-1-235.

Part 4

Enforcement

32-5-401. Department — powers and duties — adoption of rules. (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter. A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter.

(2) All rules adopted under this chapter are binding on all licensees and enforceable by the department through the power of suspension or revocation of licenses.

History: En. Sec. 3, Ch. 283, L. 1959; amd. Sec. 111, Ch. 431, L. 1975; R.C.M. 1947, 47-203.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Revocation and suspension of license, 32-5-207.

32-5-402. Investigations. The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(1) a licensee; or

(2) a person whom the department has reason to believe is violating or is about to violate this chapter.

History: En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971; amd. Sec. 5, Ch. 172, L. 1975; amd. Sec. 114, Ch. 431, L. 1975; R.C.M. 1947, 47-215; amd. Sec. 5, Ch. 216, L. 1979; amd. Sec. 8, Ch. 424, L. 1981; amd. Sec. 6, Ch. 140, L. 1983.

Cross-References

Consumer Protection Act — investigative authority, 30-14-114.

Records to be kept, 32-5-307.

Advertising — limitations, 32-5-309.

32-5-403. Annual examinations — cost. (1) The department shall make an annual examination of the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter and may make such additional examinations as the department deems necessary.

(2) The expenses of the department incurred in the examination of the books and records of the licensees shall be charged at a rate to be established by the department by rule. Such fees shall be established to recover all of the costs of the supervision program of the department. Each licensee shall be billed by the department for the amount so charged to such licensee. If said charge is not paid within 30 days after the mailing of such bill, the license of said licensee may be suspended or revoked.

History: En. Sec. 16, Ch. 283, L. 1959; amd. Sec. 7, Ch. 233, L. 1971; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-216; amd. Sec. 1, Ch. 368, L. 1983; amd. Sec. 7, Ch. 600, L. 1985.

Cross-References

Banks — examination and supervision by Department, 32-1-211.

Building and loan associations — examinations by Department, 32-2-301.

Credits unions — examinations, 32-3-203.

Annual report, 32-5-308.

32-5-404. Access to records — witnesses. For the purpose of this chapter the department or its duly authorized representatives shall be given free access to the offices and places of business, files, safes, and vaults of all such persons and may require the attendance of any person and examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, and records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, and records, the department may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers, and records.

History: En. Sec. 26, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 38, Ch. 71, L. 1977; R.C.M. 1947, 47-226.

Cross-References

Production of documents, Rule 34, M.R.Civ.P. (see Title 25, ch. 20).

Consumer Protection Act — department authority, 30-14-114.

Unfair trade practices — investigations, 30-14-221.

32-5-405. Injunctions — receivers. (1) Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation.

(2) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of said property and business. Such receiver, when

appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

History: En. Sec. 27, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-227.

Cross-References

Appointment of a receiver, Title 25, ch. 14, part 2.

Injunctions, Title 27, ch. 19.

Receivers, Title 27, ch. 20.

32-5-406. Penalties. (1) Any person who shall contract for or receive interest or charges on any bond, bill, promissory note, or other instrument of writing at a rate exceeding the maximum amount authorized by this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person who, by any device, subterfuge, or pretense whatsoever, shall engage in any transaction permitted only to licensees under the provisions of the chapter without first having obtained a license as herein required shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 28, Ch. 283, L. 1959; R.C.M. 1947, 47-228.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14, parts 1 and 2.

Penalty for usury — action to recover excessive interest, 31-1-108.

Charges, refunds, penalties, filing fees, 32-5-301.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

32-5-407. Attorney fees — bad check charge. (1) If the contract so provides, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other charges authorized by this chapter, a licensee may charge a borrower the greater of $10 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason.

History: En. Sec. 10, Ch. 424, L. 1981; amd. Sec. 4, Ch. 168, L. 1985.

Cross-References

Contractual right to attorney fees treated as reciprocal, 28-3-704.

Part 5

Open-End Loans

32-5-501. Open-end loans. (1) A holder of a supplementary license may make open-end loans and may contract for and receive charges, as allowed under 31-1-112, on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not compound charges by adding any unpaid charges authorized by this section to the unpaid principal balance of the borrower's account; however, the unpaid principal balance may include the fees paid to third parties as authorized by 32-5-504 and by 32-5-301(5).

History: En. Sec. 1, Ch. 218, L. 1981; amd. Sec. 7, Ch. 140, L. 1983; amd. Sec. 5, Ch. 168, L. 1985; amd. Sec. 6, Ch. 406, L. 1985.

32-5-502. Computation of charges. (1) Charges authorized by this part shall be computed in each billing cycle by any of the following methods:

(a) by converting the monthly rate to a daily rate and multiplying such daily rate by the daily unpaid principal balance of the account; or

(b) by multiplying the monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) by multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle.

(2) For purposes of this part, "billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than 4 days from such date.

(3) For all of the above methods of computation, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

History: En. Sec. 2, Ch. 218, L. 1981.

32-5-503. Early payment. The borrower may at any time pay all or any part of the unpaid balance in his account, or if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to minimum payment requirements as determined by the licensee and set forth in the open-end loan agreement. Minimum monthly payments shall be in such amount as would result in the full repayment of the initial loan advance, exclusive of any charges, within the maximum term set forth for other loans of the same amount in 32-5-302(1).

History: En. Sec. 3, Ch. 218, L. 1981.

32-5-504. Additional charges. In addition to the charges permitted under 32-5-501, a holder of a supplementary license may contract for and receive the fees, costs, and expenses permitted by this chapter on other loans, subject to all the conditions and restrictions set forth in the applicable provisions of this chapter with the following variations:

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance must be sufficient to pay, in the case of credit life insurance, the total balance of the loan due on the date of the borrower's death

or, in the case of credit disability insurance, all minimum payments that become due on the loan during the covered period of disability. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance, as such rate may be determined by the commissioner of insurance, to the unpaid balances in the borrower's account, using either of the methods specified in 32-5-502 for the calculation of loan charges.

(2) The amount, terms, and conditions of any insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured and the maximum anticipated amount of credit to be extended.

History: En. Sec. 4, Ch. 218, L. 1981.

Cross-References

Credit life and disability insurance, Title 33, ch. 21.

32-5-505. Security. A holder of a supplementary license may take a security interest in personal property to secure an open-end loan and may retain any such security interest until the open-end account is terminated. A holder of a supplementary license may take a security interest in real property to secure an open-end loan and may retain any such security interest until the open-end account is terminated; however, if there is no outstanding balance in the account and there is no commitment by the licensee to make additional advances, the licensee shall, within 10 days following written request by the borrower, deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan.

History: En. Sec. 5, Ch. 218, L. 1981.

Cross-References

Secured transactions, Title 30, ch. 9.

32-5-506. Provisions not applicable. The provisions of subsections (3) and (4) of 32-5-301 and the provisions of 32-5-304 do not apply to open-end loans.

History: En. Sec. 6, Ch. 218, L. 1981; amd. Sec. 6, Ch. 168, L. 1985; amd. Sec. 7, Ch. 406, L. 1985.

CHAPTER 6

ELECTRONIC FUNDS TRANSFER ACT

Part 1 — General Provisions

32-6-101. Short title.
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32-6-103. Definitions.

32-6-104. Consumer information.
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32-6-306. Personal identification number — restrictions.
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32-6-308. Standard format code.
32-6-309. Conventional checking option preserved.

Part 4 — Regulation and Enforcement

32-6-401. Rulemaking authority delegated.
32-6-402. Enforcement.

Part 1

General Provisions

Part Cross-References

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.

Credit Transactions and Relationships, Title 31.

32-6-101. Short title. This chapter shall be known and may be cited as the "Montana Electronic Funds Transfer Act".

History: En. 5-1701 by Sec. 1, Ch. 503, L. 1977; R.C.M. 1947, 5-1701.

32-6-102. Findings and purpose. (1) The legislature has determined that development of electronic funds transfer systems is a technology which promises convenience and efficiency for all types of financial depository institutions and their customers. The legislature further finds that this technology threatens to proliferate rapidly; that there presently exists no adequate governmental regulation, federal or state, to control orderly development of this technology to prevent market domination and monopolies, to provide parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved in the use of this technology. This chapter shall apply to financial institutions chartered under the United States Code, to the extent permitted by such code.

(2) The legislature finds need to control location and structural placement of electronic terminals in order to:

(a) assure access, protection, and convenience to the public using them;

(b) assure that structural placement of automated teller machines is designed to provide maximum protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using them;

(c) prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;

(d) prevent vehicle backup onto public highways;

(e) prevent undue interference with nearby businesses;

(f) locate automated teller machines in places permitting maximum sharing of their use to all operators desiring to use them under conditions herein stated.

(3) The legislature further finds that in the present state of the technology there is substantial potential for error and misuse and that these systems, including various types of terminals, telecommunications between them and computer and switching equipment or transport of electronically recorded materials from the terminals to such equipment, and the computers and switches themselves are subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious need for the exercise of the police power of this state to protect its citizens and their property in the use of this technology. Location of terminals is an important factor in such protection.

(4) The legislature further finds that commercial banks, savings and loan associations, and credit unions, chartered by both federal and state governments, are in competition for deposits, share accounts, and loans and other financial business of the state's citizens; that each has the capability of utilizing electronic funds transfer systems; and that unless there is controlled use of these systems there will be strong potentials for destructive competition and market domination by some financial institutions over others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.

(5) To meet these needs, the legislature finds that state authority must provide for authorizing such systems; for speedy and fair remedies for losses resulting from malfunction, misuse, or error; and for penalties for violation of this chapter.

History: En. 5-1702 by Sec. 2, Ch. 503, L. 1977; R.C.M. 1947, 5-1702.

Cross-References

National bank powers extended to state banks, 32-1-362.

Consolidation or merger of banks, 32-1-371.

Branch bank prohibited — exceptions, 32-1-372.

Authorization for certain satellite terminals required, 32-6-202.

Geographical restrictions on certain satellite terminals, 32-6-204.

Financial institutions — exemption from regulation of escrow business, 32-7-103.

32-6-103. Definitions. As used in this chapter, the following definitions apply unless the context otherwise requires:

(1) "Electronic funds transfer" means debiting or crediting a depositor's account or otherwise transacting any business in a financial institution by electronic impulse messages, authorized under this chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies, or otherwise, and processing the adjustments without regular and customary direct human intervention. Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through normal human intervention.

(2) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial institution.

(3) (a) "Satellite terminal" means any machine or device located off the premises of a financial institution which a financial institution or its customers may use to carry out electronic funds transfers.

(b) "Satellite terminal" includes:

(i) automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, activated by a unique identification device and personal identification number;

(ii) point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, provided that the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of "satellite terminal" does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal which is utilized by a merchant in the merchant's business only and does not provide access to a financial institution.

(4) "Premises" means those locations where by applicable law financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; the term includes a detached drive-in or walk-up facility approved under 32-1-372.

(5) "Personal identification number" means a combination of numerals or letters selected for a customer of a financial institution, merchant, or other person and used, in conjunction with a unique identification device, to initiate a request for an electronic funds transfer.

(6) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(7) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(8) "Department" means the department of commerce.

(9) "Person" means an individual, partnership, corporation, association, or any other business organization.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device containing a number unique to a customer and issued by a financial institution, merchant, or other person.

History: En. 5-1703 by Sec. 3, Ch. 503, L. 1977; R.C.M. 1947, 5-1703; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 255, L. 1989.

32-6-104. Consumer information. (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer an itemized statement clearly setting forth, without limitation:

(a) the specific transactions which may be performed through satellite terminals;

(b) the charges, if any, for individual transactions engaged in through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes his personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of theft or loss;

(e) the legal status of receipts issued from a satellite terminal;

(f) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(g) the right of the customer to seek correction of any errors he believes have been made in his account by electronic funds transfer;

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no "float" time and no stop-payment authority.

(2) The customer shall then sign a statement acknowledging his acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the

financial institution, must be provided the customer. In addition, the information set forth in subsection (1)(d) must be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided.

(3) A merchant or person other than a financial institution that issues a unique identification device to its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device a disclosure that satisfies the initial disclosures of terms and conditions under Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the disclosure requirements of this section.

History: En. 5-1706 by Sec. 6, Ch. 503, L. 1977; R.C.M. 1947, 5-1706; amd. Sec. 2, Ch. 255, L. 1989.

Cross-References

Consumer Protection Act, Title 30, ch. 14, part 1.

Unauthorized transactions — liability, 32-6-303.

32-6-105. Protection of privacy. (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without:

(a) the consent of the customer; or

(b) a subpoena issued by a court of record directing the financial institution to disclose such information to the person or government entity.

(2) Compliance with such subpoena relieves a financial institution and its employees of liability to a customer or other person for such disclosure.

(3) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse which administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction.

History: En. 5-1709 by Sec. 9, Ch. 503, L. 1977; R.C.M. 1947, 5-1709; amd. Sec. 1, Ch. 186, L. 1987.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Civil subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Evidence — subpoenas, Title 26, ch. 2, part 1.

Point-of-sale terminals — additional standards, 32-6-305.

Investigative subpoenas, Title 46, ch. 4, part 3.

Criminal subpoenas, Title 46, ch. 15, part 1.

32-6-106. Unauthorized disclosure of electronic funds transfer records. (1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if he has lawful access to such records by virtue of office or employment:

(a) and permits another, who lacks lawful access to such records, to inspect, copy, or read such records; or

(b) transfers such records to another who lacks lawful access thereto.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than $5,000, or be punished by both such imprisonment and fine.

History: En. 5-1710 by Sec. 10, Ch. 503, L. 1977; R.C.M. 1947, 5-1710.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Part 2

Satellite Terminals

32-6-201. Satellite terminals — permitted uses. Satellite terminals may be employed in the state only in the following capacities:

(1) as an automated teller machine to make electronic funds transfers as defined in this chapter, off the premises of a financial institution, operated by the customers of financial institutions without assistance;

(2) as a point-of-sale terminal, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services.

History: En. 5-1704 by Sec. 4, Ch. 503, L. 1977; R.C.M. 1947, 5-1704.

32-6-202. Authorization for certain satellite terminals required. (1) Subject to the limitation expressed in 32-6-204 and to the other requirements of this chapter, a business entity owned by a financial institution or financial institutions may install and maintain satellite terminals located within the county or a county adjoining the county in which the principal place of business, main banking house, or branch bank is located. Business organizations other than financial institutions may own satellite terminals, provided, however, that such organizations shall not engage in the business of a financial institution and that ownership and possession of such satellite terminals shall be regulated by the department and they shall not be used for any purpose other than is authorized in this chapter.

(2) A merchant may install and operate a point-of-sale terminal. A merchant may utilize a machine as a point-of-sale terminal, which machine performs functions in addition to electronic funds transfer if such other functions do not violate the provisions of this chapter.

History: En. 5-1705 by Sec. 5, Ch. 503, L. 1977; R.C.M. 1947, 5-1705; amd. Sec. 6, Ch. 322, L. 1989.

Cross-References

National bank powers extended to state banks, 32-1-362.

Branch bank prohibited — exceptions, 32-1-372.

Automatic teller machines — additional standards, 32-6-304.

Point-of-sale terminals — additional standards, 32-6-305.

Enforcement, 32-6-402.

32-6-203. Institutional access requirements. (1) A satellite terminal used by a financial institution must be made available, on a nondiscriminatory basis, to all financial institutions or branches thereof located within the geographic area that may use each type of satellite terminal, as defined and outlined in 32-6-204, and that may want to participate in using this satellite terminal. In addition, each customer authorized by any financial institution may use the satellite terminal, with the limitations on the transactions imposed and outlined in 32-6-204. The charges required to be paid by any financial institution which utilizes the satellite terminal may not exceed a pro rata portion of the cost, determined in accordance with generally accepted accounting principles, and a reasonable return on the owner's equity. A financial institution may contract with a merchant for the operation of point-of-sale terminals. The contract shall specify the conditions upon which the merchant will make the point-of-sale terminal(s) available to customers of the financial institution and shall include terms covering connection charge, fees, format code, and security provisions. A point-of-sale terminal shall be available for use by all financial institutions upon such contractual terms as may be commercially reasonable.

(2) A financial institution may invest in, acquire, or hold shares in a corporation engaged solely in operating and owning satellite terminals. A financial institution may utilize, establish, or own, either alone or with one or more financial institutions, satellite terminals and related communication equipment associated with electronic funds transfers. Other business organizations may also own satellite terminals and lease or otherwise permit financial institutions to use the satellite terminals, provided these other businesses comply with the provisions of this chapter and agree to come under the supervision of the department. Such other business organizations may not engage in the business of a financial institution.

History: En. 5-1707 by Sec. 7, Ch. 503, L. 1977; R.C.M. 1947, 5-1707; amd. Sec. 1, Ch. 205, L. 1983.

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

Investments of financial institutions, 32-1-424.

Building and loan associations — investments, 32-2-406.

Credit unions — investment of funds, 32-3-701.

32-6-204. Geographical restrictions on certain satellite terminals. (1) If a financial institution is a bank, savings and loan association, or a credit union, it may engage in electronic funds transfers by means of an automated teller machine located within the county or a county adjoining the county in which the principal place of business, main banking house, branch bank, savings and loan association, or credit union is located.

(2) Any financial institution or its customers may use any automated teller machine located in this state, regardless of its ownership, to perform electronic funds transfers under terms and conditions mutually agreeable to the owner of the automated teller machine and the other user and pursuant to 32-6-203(1).

(3) The department may authorize the operation of an automated teller machine which a financial institution uses only if such institution complies with this chapter and regulations adopted by the department.

(4) No out-of-state financial institution may establish a satellite terminal within the state or lease through other businesses satellite terminals within Montana. An out-of-state financial institution may not engage in electronic funds transfers within the state, except that a customer of an out-of-state financial institution may:

(a) debit his account in an out-of-state financial institution at an in-state satellite terminal:

(i) in order to withdraw cash; or

(ii) to pay for merchandise and services, provided the merchant credits an account in a financial institution whose principal place of business is located within the state; or

(b) make inquiry as to his account balance.

(5) Point-of-sale terminals may be available to all customers authorized by in-state financial institutions for debiting accounts to pay for merchandise and services.

History: **En. 5-1708 by Sec. 8, Ch. 503, L. 1977; R.C.M. 1947, 5-1708; amd. Sec. 2, Ch. 205, L. 1983; amd. Sec. 1, Ch. 238, L. 1985; amd. Sec. 7, Ch. 322, L. 1989.**

Cross-References

Foreign corporations, 32-1-103.

Branch bank prohibited — exceptions, 32-1-372.

When advertising as bank prohibited, 32-1-402.

Point-of-sale terminals — additional standards, 32-6-305.

Regulation and enforcement, Title 32, ch. 6, part 4.

Part 3

Operation

Part Cross-References

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

32-6-301. Records of electronic funds transfers. (1) A satellite terminal shall be operated so as to produce a humanly readable record of any transaction and to provide a copy of this record to the person initiating the transaction as soon as the transaction is complete.

(2) The receipt provided to the person initiating an electronic funds transfer shall be admissible as evidence in any legal proceeding and constitutes prima facie proof of the transaction which it records.

(3) (a) A financial institution shall provide each of its customers utilizing electronic funds transfer services with a periodic account statement containing a brief description of all electronic funds transfers sufficient to enable the customer to identify any transaction and relate the transaction to the receipt provided under subsection (1) of this section.

(b) When a periodic account statement includes both electronic funds transfers and other transactions, all electronic funds transfers shall be identified as such and be furnished in compliance with this subsection.

History: En. 5-1711 by Sec. 11, Ch. 503, L. 1977; R.C.M. 1947, 5-1711.

Cross-References

Reproduction of bank records — admissibility in evidence, 32-1-492.

Admissibility of copies in evidence — exception when original available, 32-1-493.

Protection of privacy, 32-6-105.

Unauthorized disclosure of electronic funds transfer records, 32-6-106.

32-6-302. Verification of statement — procedure for discrepancies. (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer shall identify himself and the foundation of his belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction (if the correction is not in the exact amount of the alleged error, the description shall explain the difference); or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, shall be furnished the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in such account affecting the portion not in dispute until it complies with subsection (2). A financial institution which has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error.

History: En. 5-1712 by Sec. 12, Ch. 503, L. 1977; R.C.M. 1947, 5-1712.

32-6-303. Unauthorized transactions — liability. (1) A customer whose account is debited by an electronic funds transfer without his authorization is not liable for the amount of such transaction, and the amount must be recredited to his account as provided under 32-6-302, unless:

(a) the financial institution has provided the customer a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first $50 of any consequent transactions made prior to the time the financial institution is notified of the loss or theft; or

(b) the financial institution has provided the customer a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of the theft or loss.

(2) A customer who willingly gives his unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by the other person.

(3) A merchant who makes electronic funds transfer services available on his premises is liable for the amount of an unauthorized electronic funds transfer requested from his premises only if:

(a) he or his agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) he fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) he breaches the warranty required by subsection (4).

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution or the department that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer that does not fall upon a customer or a merchant under this section falls upon the financial institution that carries out the transfer.

History: En. 5-1713 by Sec. 13, Ch. 503, L. 1977; R.C.M. 1947, 5-1713; amd. Sec. 3, Ch. 255, L. 1989.

Cross-References

Destruction of bank records, 32-1-491.

Consumer information, 32-6-104.

32-6-304. Automatic teller machines — additional standards. Before the department authorizes an automatic teller machine, the owner must certify to the department that the machine complies with the provisions of this chapter and is:

(1) equipped with adequate security provisions;

(2) activated by a unique identification device;

(3) designed so as to produce the transaction record required by 32-6-301(1).

History: En. 5-1714 by Sec. 14, Ch. 503, L. 1977; R.C.M. 1947, 5-1714.

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

Protection of privacy, 32-6-105.

Authorization for certain satellite terminals required, 32-6-202.

32-6-305. Point-of-sale terminals — additional standards. (1) Before the department approves a point-of-sale terminal, it must find that the merchant demonstrates on his application that:

(a) he will use acceptable procedures for customer self-identification;

(b) he will use a draft and receipt system, on which the customer's signature acknowledges receipt of the goods or services paid for by electronic funds transfer. If the sale is initiated by the customer entering his personal identification number in the point-of-sale terminal, the merchant is not required to obtain the customer's signature.

(c) he will institute a procedure whereby he keeps one copy of each draft and receipt for 1 year following the date of transaction, he gives one copy to the customer in satisfaction of 32-6-301(1), and he forwards one copy to the customer's financial institution. The requirement of a copy to the financial institution may be waived by the department by rule if the point-of-sale terminal is activated by a customer's unique identification device.

(2) A financial institution involved in an electronic funds transfer initiated from a point-of-sale terminal may inspect the merchant's copy of the transaction record for any purpose consistent with the privacy provisions of 32-6-105.

History: En. 5-1715 by Sec. 15, Ch. 503, L. 1977; R.C.M. 1947, 5-1715; amd. Sec. 4, Ch. 255, L. 1989.

Cross-References

Branch bank prohibited — exceptions, 32-1-372.

Destruction of bank records, 32-1-491.

Authorization for certain satellite terminals required, 32-6-202.

32-6-306. Personal identification number — restrictions. (1) A financial institution may not assign a personal identification number to a customer which is identical to that customer's social security account number, driver's license number, or any other number assigned for other purposes to that customer.

(2) A satellite terminal may not be operated so as to print a customer's personal identification number on the humanly readable receipt furnished at the time of a transaction.

History: En. 5-1716 by Sec. 16, Ch. 503, L. 1977; R.C.M. 1947, 5-1716.

Cross-References

Personal identification number defined, 32-6-103.

Driver's license, 61-5-111.

32-6-307. Advertising — restrictions. Advertising on satellite terminals shall be restricted to a common symbol or to identification of each participating financial institution in characters of equal size and prominence. This section does not restrict the right of financial institutions to advertise electronic funds transfer services in other media.

History: En. 5-1717 by Sec. 17, Ch. 503, L. 1977; R.C.M. 1947, 5-1717.

Cross-References

When advertising as bank prohibited, 32-1-402.

32-6-308. Standard format code. All satellite terminals in the state shall be operated by a standard format code compatible with that used in other states. If cards are used as unique identification devices, the department may, by rule, prescribe a standard size.

History: En. 5-1718 by Sec. 18, Ch. 503, L. 1977; R.C.M. 1947, 5-1718.

32-6-309. Conventional checking option preserved. A financial institution may not require any customer to deal with or through it by means of electronic funds transfer in lieu of writing checks in the usual manner upon a conventional checking account and may not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that financial institution. Nothing in this section prohibits a financial institution from charging a reasonable fee to cover the expenses of providing a checking account to a customer or from realizing a reasonable profit for providing that service.

History: En. 5-1719 by Sec. 19, Ch. 503, L. 1977; R.C.M. 1947, 5-1719.

Cross-References

Bank deposits and collections, Title 30, ch. 4.

Part 4

Regulation and Enforcement

32-6-401. Rulemaking authority delegated. The department may adopt, amend, or repeal rules reasonably necessary to implement this chapter and effectuate its purposes.

History: En. 5-1720 by Sec. 20, Ch. 503, L. 1977; R.C.M. 1947, 5-1720.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-6-402. Enforcement. (1) Upon petition of the department and opportunity for a hearing under the Montana Administrative Procedure Act, the department may revoke or suspend authorization to operate a satellite terminal or to participate in its operation on the grounds that the person holding such authority has violated a provision of this chapter or a rule validly adopted.

(2) The department may bring an action in district court to enjoin a person from operating or participating in the operation of a satellite terminal without authority.

History: En. 5-1721 by Sec. 21, Ch. 503, L. 1977; R.C.M. 1947, 5-1721.

Cross-References

Administrative procedure — contested cases, Title 2, ch. 4, part 6.

Hearing — rules of evidence, cross-examination, judicial notice, 2-4-612.

Injunctions, Title 27, ch. 19.

Authorization for certain satellite terminals required, 32-6-202.

CHAPTER 7

ESCROW BUSINESSES

Part 1 — Regulation of Escrow Businesses

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32-7-124. Hearings and appeals.

Part 1

Regulation of Escrow Businesses

32-7-101. Title and purpose. (1) This part shall be known and may be cited as the "Regulation of Escrow Businesses Act".

(2) It is the intent of the legislature that the escrow industry be supervised and regulated by the financial division of the department of commerce in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly among the members of the escrow industry, with due regard to the ultimate consumers in this important area of property protection.

History: En. Sec. 1, Ch. 651, L. 1989.

32-7-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of commerce as provided for in Title 2, chapter 15, part 18.

(2) "Director" means the director of the department of commerce.

(3) "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making payments under any

encumbrance of the property, delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any of his agents or employees pursuant to the written escrow instructions.

(4) "Escrow business" means a commercial activity characterized by the regular and continuous carrying on of escrow transactions.

(5) "Licensee" means a person holding a valid license under this part as an escrow business.

(6) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, or other legal entity.

History: En. Sec. 2, Ch. 651, L. 1989.

32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution must supply a copy of the most recently prepared audit or examination to the director upon his request.

(e) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if he is performing an act:

(i) in the course of or incidental to a single real estate transaction; and

(ii) for which a real estate license is required; and

(f) any person furnishing escrow services under the order of a court.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part.

History: En. Sec. 3, Ch. 651, L. 1989.

32-7-104. Exemption or exception — burden of proof. In any proceeding under this part, the burden of proving an exemption or exception from a definition is upon the person claiming it.

History: En. Sec. 4, Ch. 651, L. 1989.

32-7-105 through 32-7-107 reserved.

32-7-108. Director — powers and duties. (1) The director shall exercise general supervision and control over persons doing escrow business in this state.

(2) In addition to the other duties imposed upon him by law, the director shall:

(a) adopt reasonable rules necessary to effectuate the purposes of this part;

(b) conduct examinations and investigations that may be necessary to determine whether a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this part;

(c) conduct examinations, investigations, and hearings necessary and proper for the efficient administration of this part; and

(d) establish fees commensurate with the costs of issuing the license and examining an escrow business.

History: En. Sec. 5, Ch. 651, L. 1989.

Cross References

Rule defined, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

32-7-109. Application for license — issuance. (1) A person must be licensed pursuant to this part before engaging in an escrow business.

(2) To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:

(a) the location of the applicant's principal office and all branch offices in this state;

(b) the name and form under which the applicant plans to conduct business;

(c) the general plan and character of the business;

(d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each his capacity and title;

(e) the experience and qualifications of the persons proposed to act as officers and managers;

(f) the length of time the applicant has been engaged in the escrow business; and

(g) any other relevant information the director requires.

(3) The director shall grant and issue an escrow business license if:

(a) the director has received and filed the application specified in this section; and

(b) the applicant has complied with all the requirements of this part and any rules promulgated under it.

(4) An escrow business shall immediately notify the department of any material change in the information contained in the application.

History: En. Sec. 6, Ch. 651, L. 1989.

Cross References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

32-7-110. Fees. (1) (a) An applicant for licensure shall pay a license fee set by the director, commensurate with the costs of licensing the applicant.

(b) A licensee may be charged an examination fee based on the actual costs of the examination.

(2) All fees collected by the department for the licensure and examination of escrow businesses must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under this part.

History: En. Sec. 11, Ch. 651, L. 1989.

Cross References

Suspension of license fees for persons in military service, 10-1-605.

Professional and occupational licensing boards to establish fees commensurate with costs, 37-1-134.

32-7-111. Transferability. An escrow business license is not transferable or assignable. The provisions of this section apply to the change of ownership of any escrow business, including the change of control over any corporation licensed as an escrow business. For purposes of this section, "change of control" means the transfer of 25% or more of the outstanding voting stock of the corporation.

History: En. Sec. 7, Ch. 651, L. 1989.

32-7-112 through 32-7-114 reserved.

32-7-115. Maintenance of records. (1) A licensee shall establish and maintain the books, accounts, and records necessary to enable the director at any time to determine whether the escrow transactions performed by the licensee comply with the provisions of this part. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles and good business practice.

(2) A licensee shall establish and maintain the following records concerning general accounts:

(a) a general record reflecting the assets, liabilities, capital, income, and expense of the business, maintained in accordance with generally accepted accounting principles;

(b) a cash receipt and disbursement journal; and

(c) a reconciliation of monthly statements to the general record.

(3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with the bank statements reflecting each escrow account.

(4) A licensee shall preserve for at least 3 years after the close of any escrow:

(a) all bank statements reflecting each escrow account and records of monthly reconciliations of the statements to the general record;

(b) all canceled checks drawn on each escrow account;

(c) any additional records reflecting banking transactions regarding each escrow account, including copies of all receipts for funds transferred from other accounts into each escrow account;

(d) all statements of account;

(e) all escrow instructions and amendments to them; and

(f) all additional records pertinent to each escrow transaction.

(5) A licensee shall perform one of the following:

(a) file annually with the director, on or before April 30, a statement of its financial condition, transactions, and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good cause for an extension. The financial statement must be certified by an independent public accountant and must be in a form and contain the information prescribed by the director.

(b) request that the director examine the financial condition, transactions, and affairs of the licensee pursuant to procedures prescribed by the director.

History: En. Sec. 8, Ch. 651, L. 1989.

32-7-116. Statement of account. A licensee shall provide a full statement of an escrow account established under an escrow agreement within 14 days of a written request made by a party to the escrow agreement. The statement must state:

(1) credits to principal;

(2) interest earned for the period; and

(3) other information requested.

History: En. Sec. 9, Ch. 651, L. 1989.

32-7-117. Deposit of funds required — disbursement. (1) All money deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited with a financial institution, as defined in 32-6-103, doing business in this state and must be kept separate, distinct, and apart from funds belonging to the escrow business. The funds, when deposited, must be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the escrow business.

(2) A person may not knowingly keep or cause to be kept any funds or money with a financial institution, as defined in 32-6-103, under the heading of "escrow accounts" or any other name designating the funds or money as belonging to the clients of any escrow business, except actual escrow funds deposited with the escrow business.

(3) Escrow funds are not subject to execution or attachment on any claim against the escrow business.

(4) Any interest received on funds deposited with an escrow business in connection with any escrow that is deposited in an authorized depository must be paid over to the depositing party to the escrow account and may not be transferred to an account of the escrow business. This section does not limit or restrain the right of the depositing party to contract with respect to the interest received on the deposits by an independent agreement.

(5) An escrow business may not disburse funds from any escrow account until cash, items, or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and are available for withdrawal from the account as a matter of right. For the purposes of this subsection, the following definitions apply:

(a) "Available for withdrawal from the account as a matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.

(b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order.

History: En. Sec. 10, Ch. 651, L. 1989.

32-7-118 through 32-7-120 reserved.

32-7-121. Unauthorized business practices — penalty. (1) Unauthorized business practices of escrow businesses include but are not limited to the following:

(a) issuing, circulating, making use of, or publishing, by any means of communication, an advertisement indicating that a person is in the escrow business if that person is not a licensed escrow business;

(b) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion, or alteration is signed or initialed by the affected party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion, or alteration;

(c) failing to carry out the escrow transactions pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement or their assigns;

(d) accepting any escrow transaction that requires or has required the prepayment, deduction, or withholding of any sum to cover payments on the indebtedness or any prior encumbrance if the payments are not due and payable to the mortgagee or obligee at the time the escrow is established. However, payments may be made on property taxes for the current year or for the next annual premium on hazard insurance.

(e) refusing to allow parties to an escrow transaction or designated agents of those parties access to the records of the escrow transaction; and

(f) failing to promptly distribute funds pursuant to escrow instructions.

(2) Any licensee who engages in an unauthorized business practice is subject to the revocation or suspension of the licensee's license.

History: En. Sec. 12, Ch. 651, L. 1989.

Cross References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

32-7-122. Investigations by director — desist order — injunctions or other actions. (1) The director may investigate, upon complaint or otherwise, if it appears that:

(a) an escrow business is conducting its business in an unsafe and injurious manner or in violation of this part or any rule promulgated pursuant to this part; or

(b) a person is engaging in the escrow business without being licensed under the provisions of this part.

(2) (a) If it appears to the director, upon sufficient grounds or evidence satisfactory to the director, that an escrow business has engaged or is about to engage in any act or practice in violation of this part or any rule or order issued pursuant to this part or that the assets or capital of any escrow business or company are impaired or the licensee's affairs are in an unsafe condition, the director may summarily order the escrow business to cease and desist from the act or practice or the director may apply to the district court of the first judicial district of Lewis and Clark County to enjoin the act or practice and to enforce compliance with this part or for any other appropriate equitable relief.

(b) Upon a proper showing, the court may:

(i) grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction;

(ii) appoint a receiver for the defendant or defendant's assets;

(iii) cancel the licensee's license; and

(iv) order other equitable remedies the court considers necessary and appropriate.

(3) The court may not require the director to post a bond.

History: En. Sec. 13, Ch. 651, L. 1989.

Cross References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 20.

Montana Rules of Civil Procedure, Title 25, ch. 20.

32-7-123. Subpoenas — oaths — examinations of witness and evidence. (1) In the conduct of any examination, investigation, or hearing, the director may:

(a) compel the attendance of any person or obtain any documents by subpoena;

(b) administer oaths;

(c) examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this part; and

(d) require the production of any books, records, or papers relevant to the inquiry.

(2) If a person refuses to obey a subpoena issued to the director, the district court of the first judicial district of Lewis and Clark County or other district court having proper venue, upon application by the director, may order the person to produce documentary evidence or to give evidence relating to the matter under investigation or in question. If a person fails to obey the order of the court, the person may be punished by the court as contempt of court.

History: En. Sec. 14, Ch. 651, L. 1989.

32-7-124. Hearings and appeals. The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a contested case brought under this part.

History: En. Sec. 15, Ch. 651, L. 1989.

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